MUNICIPAL CONFLICT OF INTEREST REVIEW

REPORT OF THE
MUNICIPAL CONFLICT OF INTEREST
CONSULTATION COMMITTEE
TO
THE MINISTER OF MUNICIPAL AFFAIRS

JULY, 1991

MUNICIPAL CONFLICT OF INTEREST REVIEW

REPORT OF THE
MUNICIPAL CONFLICT OF INTEREST
CONSULTATION COMMITTEE
TO
THE MINISTER OF MUNICIPAL AFFAIRS

JULY, 1991

Disponible en français

© Queen's Printer for Ontario, 1991 ISBN: 0-7729-8943-5

LETTER OF TRANSMITTAL

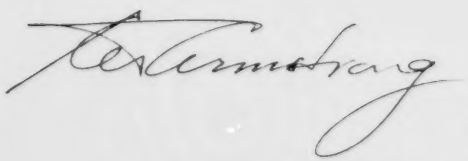
July 31, 1991

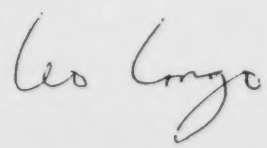
The Honourable Dave Cooke
Minister of Municipal Affairs
777 Bay Street, 10th Floor
Toronto, Ontario
M5G 2E5

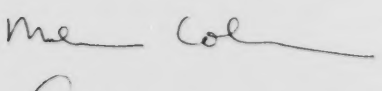
Dear Sir:

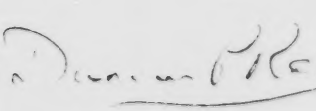
In accordance with the terms of reference for the Municipal Conflict of Interest Consultation Committee, the Committee submits its Report to you.

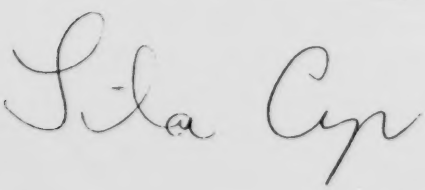
We are grateful for having had the opportunity to examine the area of municipal conflict of interest and to make recommendations that will improve the effectiveness and integrity of our local government system.

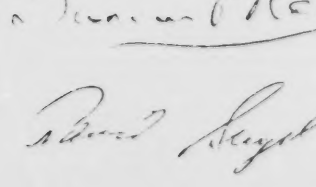


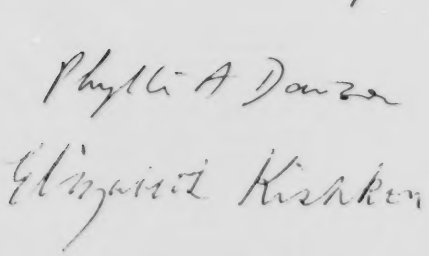


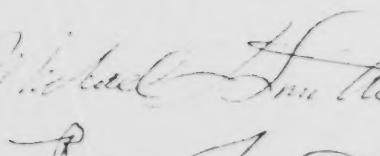












92-01950/

CONTENTS

		Page
	PREFACE	
I	INTRODUCTION	
	. Intent and Principal Features of the Municipal Conflict of Interest Act	1
	. History of Municipal Conflict of Interest Legislation in Ontario	2
	. Areas of Concern with the Existing Legislation	2
	. Mandate and Process of the Review	3
II	SUMMARY OF RECOMMENDATIONS	6
III	MUNICIPAL CONFLICT OF INTEREST ISSUES	
	. Name of Statute	21
	. Statement of Purpose	22
	. Application and Interpretation	24
	- Advisory Capacity	24
	- Committee and Special Meetings	27
	- Concept of Family	28
	- Ex-Officio Capacity	30
	- French-language Section-School Board	32
	- Members' Volunteer and Community Activities	33
	- Union and Professional Memberships	35
	. Conflict of Interest	36
	. Pecuniary Interest	38
	. Remote or Insignificant Pecuniary Interest	42
	. Community of Interest	43
	. Disclosure of Assets and Interests	46
	. Disclosure of Pecuniary Interests	51
	. Central Register of Disclosures	54
	. Influence	56
	. Lack of Quorum	58
	. Enforcement	59
	- Method of Enforcement	59
	- Penalties	68
	- Legal Costs	72
	. Option for Higher Standards	74
	. Education and Training	76

IV OTHER ISSUES

. Post-Employment Restrictions 78
. Coverage for Local Government Employees 80
. Gifts and Benefits 82
. Insider Information 84
. Municipal Election Campaign Contributions 86
. Open and Closed Meetings 87
. School Board Members-Employees 88
. Dual Employment 91

V APPENDICES

. A Terms of Reference of the Municipal Conflict of Interest Review 92

. B Biographies of Members of the Municipal Conflict of Interest Consultation Committee 93

. C Public Meetings Held in 1991 by the Municipal Conflict of Interest Consultation Committee 96

. D Submissions and Presentations to the Municipal Conflict of Interest Consultation Committee 97

. E Proposed Forms Under the Amended Municipal Conflict of Interest Act 102

PREFACE

Integrity and accountability are the cornerstones of a strong local government system. In serving the needs of their community, local government office holders must consistently meet stringent standards of ethical behaviour to maintain and enhance the public's confidence in its local government institutions. Such standards of behaviour must hold across municipalities of all sizes and within local government bodies of all types.

Effective and understandable conflict of interest rules are a critical part of ethical decision-making in local government. The underlying principle of conflict of interest legislation was stated by Mr. Justice Robins in Re Moll and Fisher[1] as "no man can serve two masters":

> The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motives, he is in contravention of the statute....
>
> This enactment, like all conflict of interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty.
>
> The public's confidence in its elected representatives demands no less. Legislation of this nature must, it is clear, be construed broadly and in a manner consistent with its purpose.

The Municipal Conflict of Interest Act governs the conduct of local government members regarding conflict of interest. The Municipal Conflict of Interest Review will serve to improve the rules for municipal conflict of interest and thereby fortify the integrity and accountability of our local government system.

---

[1] (1979) 23 Ontario Reports (2d) 609.

INTRODUCTION

Intent and Principles of the Municipal Conflict of Interest Act

The overriding purpose of the Municipal Conflict of Interest Act is to protect the interest of the public by preventing local government members from benefitting personally from their position in public office. The legislation attempts to strike a balance between the public interest and the rights of members to participate fully in the decision-making process and thereby effectively carry out their public responsibilities. It is important to recognize that in achieving this, the legislation must not unnecessarily fetter the actions of members by imposing requirements that are onerous or burdensome.

It is quite reasonable to expect that members, in serving the community, may at some time have a financial or pecuniary interest in a matter before them. The existence of a member's personal pecuniary interest is not harmful. However, participating in or influencing a decision in the presence of a personal pecuniary interest can result in economic gain for the member. More importantly, such actions are perceived as a means of profiting from public office, regardless of whether the member actually realizes a material benefit. Therefore, members must clearly ensure that their personal interests do not affect their public decisions.

The Act restricts members from participating in decisions on matters in which they have a pecuniary interest. The Act achieves this through the principles of disclosure and abstention. A member is required to disclose her or his pecuniary interest in a matter under consideration and to withdraw completely from decision-making on that matter. Members are free to deal with all other matters. The Act also recognizes those situations where a member's pecuniary interest will not compromise the decision-making process and, accordingly, contains a number of exemptions to the requirements.

In summary, these principles ensure that no person is barred from seeking local public office because of a potential conflict of interest. All members of the community are entitled to serve in local office, including those who have vested financial interests in matters involving local government bodies. The enhanced participation these provisions allow results in stronger and more representative local government.

The History of Municipal Conflict of Interest Legislation In Ontario

Prior to 1972, the municipal conflict of interest provisions were contained primarily in the Municipal Act and were based on the principle of disqualification. Anyone who had a contract with or a claim against a municipality was prohibited from holding office on that municipal council. Under these provisions, members had to forfeit their office if they acquired a contractual interest after they were elected or appointed.

The Municipal Conflict of Interest Act, which came into force in 1972, represented a fundamental reform of the law in this area by removing the blanket prohibition and replacing it with the principles of disclosure and abstention. Therefore, a person was no longer disqualified from holding office because she or he may have had a pecuniary interest in a matter before the municipal council, school board or local board. Rather, the new principles prohibited members from dealing with those matters in which they had a pecuniary interest. Replacing the highly restrictive disqualification provisions with the principles of disclosure and abstention enabled many more people to participate in the activities of local government as elected or appointed members.

After the Act had been in place for a number of years, shortcomings in several areas of the legislation became evident. These included the vagueness of the concept of pecuniary interest and the insufficient number of exemptions in the Act. As a result, the Act was amended in 1983 based on the recommendations of the Association of Municipalities of Ontario Conflict of Interest Committee, 1979. The recommendations were developed following a comprehensive consultation with municipal council members, school board trustees and other interested persons, and resulted in changes to clarify wording and clarity of expression.

Areas of Concern with the Existing Legislation

Since the Act was last amended in 1983, further concerns about the effectiveness of the legislation have been raised, both by the public and by local government members themselves. In addition, several high profile court decisions have revealed certain weaknesses in the legislation, and the media has made conflict of interest a key issue of attention.

The concerns voiced by members and the public most frequently relate to the following areas of the legislation:

- the definitions;
- the penalties;
- the enforcement process.

Some additional related questions and issues, not directly addressed by the existing legislation, have also been identified. For example, should the Act extend to local government employees, and should conflict of interest rules cover gifts and benefits received due to a mer ber's position in public office?

As a result of these questions and issues, members have expressed concern that they are unable to meet their responsibilities under the Act adequately, and the public has stated that the rules are unclear and difficult to understand and that the financial burden on the individual is too severe to enforce the Act.

Mandate and Process of the Review

In August 1990, the previous Government announced the establishment of the Municipal Conflict of Interest Review to examine areas of concern with the Municipal Conflict of Interest Act. At that time, a consultation committee of nine members was appointed to conduct the review and seek input on how to improve the existing conflict of interest rules. The initiative was postponed pending the September provincial election and the subsequent change in government.

On January 18, 1991 the Minister of Municipal Affairs, the Honourable Dave Cooke, announced the continuation of the review. The Minister broadened the terms of reference for the review to include several related issues and increased the Committee membership by two. The Committee was requested to make recommendations for appropriate legislative changes by July 31, 1991. The terms of reference established for the Committee are contained in Appendix A.

The Committee's composition reflects the diversity in perspectives on this issue. Nominees of the Association of Municipalities of Ontario, the Ontario School Trustees' Council, the Law Society of Upper Canada, local government bodies, citizens' associations, and the journalism and academic fields comprise the Committee. Brief biographies of each Committee member have been included in

Appendix B. The Committee members are:

- Cy Armstrong, Chair
- David Barrett
- Melissa Coleman
- Lila Cyr
- Phyllis Davison
- Elizabeth Kishkon
- Leo Longo
- Duncan Read
- David Siegel
- Michael Smither
- Ray Timson

The Act applies to a broad range of local government bodies and, consequently, affects a large number of people serving in office at the local level. Conflict of interest is also an issue of great importance to the public. In recognizing the diversity of views on this matter, and the importance of hearing from all affected and interested parties, broad consultation formed a major part of the Committee's review.

The Committee held a series of twenty-four public meetings across the province during April and early May, 1991 to receive people's views and suggestions on how improvements to the Act can best be achieved. The Committee also received written briefs through May 31, 1991. It was clear to the Committee that many of the individuals and groups that made submissions worked very hard to provide constructive input. The public meeting schedule is set out in Appendix C. Appendix D contains the names of those local government bodies, associations, and individuals who appeared before or made submissions to the Committee.

To obtain specific input or information on various issues, the Committee also consulted directly with a number of provincial agencies and local government associations, including those in other provinces. The Committee is grateful for the information and assistance given by their representatives.

The Committee also extends thanks to staff at the Ministry of Municipal Affairs who provided research and administrative assistance throughout the course of the review: Sherry Fleck, senior policy advisor and project co-ordinator; Mike Lesurf, Karen Shamas, Tom Melville, Gary Jamieson, and Marika Kozachenko. The Committee also thanks staff in the Ministry's field offices for the valuable information provided in conjunction with public meetings.

While the assistance of staff in the development of the report was invaluable, their role was limited to providing advice and assistance. This report was prepared by the Committee, and the recommendations and the opinions contained in it are the sole responsibility of the Committee.

In forming its recommendations, the Committee gave full consideration to all views, suggestions and information received through consultation and research. While the large majority of the Committee's recommendations were reached by consensus, consideration of some issues resulted in recommendations which represent the majority voice. In these cases, the difference in opinion among members has been included in the report.

This report addresses the issues of concern identified through the Committee's consultation and makes recommendations for improvements to the Act and related areas. The report is structured on an issue-by-issue basis. For each issue, a discussion, recommendations and supporting rationale are presented. Part III, MUNICIPAL CONFLICT OF INTEREST, covers those issues which are properly within or directly related to the scope of the Municipal Conflict of Interest Act. Related issues of importance which were either specified in the terms of reference or raised during the consultation are included under Part IV, OTHER ISSUES.

SUMMARY OF RECOMMENDATIONS

Recommendation 1 That the present title of the statute, the Municipal Conflict of Interest Act, be retained.

Recommendation 2 That the Municipal Conflict of Interest Act be amended to include, as section 1, a statement of purpose explaining that the intentions and principles of the Act are

- to preserve the integrity of the local government decision-making process;
- to ensure that members' personal pecuniary interests do not affect their public duties;
- to ensure that members do not use their public office to further their personal pecuniary interests;
- to provide a procedure for the disclosure of certain assets and interests by members;
- to provide a procedure for the disclosure of a pecuniary interest and for withdrawal from the decision-making process where the personal pecuniary interest of a member may conflict with the public interest and where the exceptions do not apply;
- to facilitate enforcement through the Municipal Conflict of Interest Commission, which would be empowered to enforce the Act and bear the associated costs;
- to provide remedies when a member does not disclose a personal pecuniary interest and withdraw from decision-making;

- to provide public access to the information required to determine the conduct of members and to enforce this Act.

Recommendation 3

That the definition of "member" in the Municipal Conflict of Interest Act be amended to mean a person who is at any time entitled to participate in the decision-making process with respect to a matter under consideration, and to exclude a person acting solely in an advisory capacity.

The word "advisor" would be defined in the Act to mean a person who acts in an advisory capacity only. An advisor would not at any time be entitled to participate in the decision-making process or vote (except in an advisory capacity) with respect to a matter under consideration.

An advisor would be required to disclose a pecuniary interest and the general nature of the pecuniary interest in a matter under consideration and would be permitted to participate in the discussion of and voting on any such matter under consideration as long as such discussion or vote is with respect to a matter of advice only.

The details of the disclosure of a pecuniary interest and the general nature of the pecuniary interest disclosed by an advisor would be appended to any report or recommendation made by the body of which such person is a member in addition to being recorded in the minutes of the meeting at which the disclosure was made.
(See Appendix E for proposed form.)

Recommendation 4

That the definition of "local board" in the Municipal Conflict of Interest Act be amended to include all bodies acting in an advisory capacity to a municipal council, school board or local board.

Recommendation 5

That section 5 of the Municipal Conflict of Interest Act be amended to make it clear that the Act applies to any regular, special, committee, sub-committee or other meeting of a municipal council, school board or local board.

Recommendation 6

That the Municipal Conflict of Interest Act be amended to include the pecuniary interest of the spouse of a member's child, if the pecuniary interest is known to the member, for the purpose of determining a deemed pecuniary interest of the member.

Recommendation 7

That the Municipal Conflict of Interest Act be amended to include the pecuniary interest of the member's sibling(s) and the spouse(s) of the member's sibling(s), if the pecuniary interest is known to the member, for the purpose of determining a deemed pecuniary interest of the member.

Recommendation 8

That clause 4(h) of the Municipal Conflict of Interest Act be amended as follows:

'The duties of the member under this Act do not apply to a pecuniary interest in any matter that a member may have,

- **by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality, school board or local board; or**

- **by reason only of membership on a municipal council, school board, local board or commission, or other body when that membership is required by a statute or regulation because of a member's office on another municipal council, school board or local board; or**

- by reason only of the member being a member of a board, commission or other body as an appointee of a municipal council, school board or local board."

Recommendation 9

That the Municipal Conflict of Interest Act be amended to include an exception for a member of an English or French-language section of a school board when a matter related to language programming is under consideration by the school board.

Recommendation 10

That the Municipal Conflict of Interest Act be amended to include an exception for members who have a pecuniary interest due to their volunteer activities or membership, or those of a relative as defined in the Act, in non-profit and not-for-profit community-based organizations, provided they receive no salary, remuneration or financial benefit from the organizations and provided the pecuniary interest of the member or defined relative is held in common with all members of such organization.

Non-profit and not-for-profit community-based organizations would include, but not be limited to, a service club, a chamber of commerce, a board of trade, and the Royal Canadian Legion.

Recommendation 11

That the Municipal Conflict of Interest Act be amended to include an exception for members who have a pecuniary interest due only to membership in a trade union, including the Ontario Teachers' Federation, or a professional association.

Recommendation 12

That the Municipal Conflict of Interest Act be amended to include a definition of "conflict of interest" as follows:

"For the purposes of this Act, a "conflict of interest" exists when a member who has a pecuniary interest in a matter fails to comply with a duty of a member under this Act."

Recommendation 13

That the Municipal Conflict of Interest Act be amended as follows to include a definition of "pecuniary interest":

"For the purposes of this Act, "pecuniary interest" means an interest consisting of money, measured in money or related to money (including a financial gain or an avoidance of financial loss), and includes the following:

a) a "direct pecuniary interest" which exists where the pecuniary interest is directly under the control of the member;

b) an "indirect pecuniary interest" which exists where the member or his or her nominee,

i) is a shareholder in, or a director or senior officer of, a corporation or agency that does not offer its securities to the public,

ii) has a controlling interest in, or is a director or senior officer of, a corporation or agency that offers its securities to the public, or

iii) is a member of a body that has a pecuniary interest in the matter; or

iv) is a partner or agent of a person who has a pecuniary interest in the matter; or

v) is in the employment of a person or body that has a pecuniary interest in the matter;

c) a "deemed pecuniary interest" which exists where the pecuniary interest of a parent, a spouse, a sibling, a child or the spouse of such child or sibling of the member is known to the member."

Recommendation 14 — That the Municipal Conflict of Interest Act be amended to refer consistently to pecuniary interest.

Recommendation 15 — That the exception in the Municipal Conflict of Interest Act for a member's pecuniary interest which is "remote or insignificant" not be amended by assigning a dollar value to "remote or insignificant".

Recommendation 16 — That the Municipal Conflict of Interest Act be amended to change the term "interest in common with the electors generally" to "community of interest in common with the electors generally". This revised definition would include a special procedure allowing members, after disclosing their interest, to participate. The revised definition would:

- specifically refer to and exempt from the Act under the heading of "community of interest" a member's pecuniary interest by reason only of that member's occupancy of a residential property which is or may be affected by the decision of the municipal council or the local board in common with other electors in the area of jurisdiction or part of the area of jurisdiction;

- give municipal councils, by by-law, and school boards and local boards, by resolution, permissive authority to determine in advance a "community of interest" where a majority of the members have a pecuniary interest in the matter under consideration;

- ensure that the existence of the member's pecuniary interest in the above cases is known to the public by requiring the

member to disclose the pecuniary interest while allowing the member to participate in discussion and voting on the matter.

Recommendation 17

That the Municipal Conflict of Interest Act be amended to require each member of a municipal council, public utilities commission, land division committee, committee of adjustment, planning board, planning advisory committee, conservation authority or school board, to file a disclosure statement of certain assets and interests with the municipal clerk or appropriate school or local board official within sixty days after election or appointment.

The disclosure statement of certain assets and interests would apply to each member and her or his spouse and would contain:

- the municipal address of real property holdings, including ownership and equitable and leasehold interests in real property, within or adjacent to the area of jurisdiction;

- the municipal address of real property within or adjacent to the area of jurisdiction in which an interest in a mortgage or charge is held.

The member would be required to file a supplementary disclosure statement within thirty days of any change in status of such assets or liabilities.
(See Appendix E for proposed form.)

Recommendation 18

That the Municipal Conflict of Interest Act be amended to require a member to make a verbal disclosure of a pecuniary interest and to file a written disclosure of the pecuniary interest with the municipal clerk or appropriate school or local board official.

The written disclosure would state the member's pecuniary interest in the matter and provide a general description of the nature of the pecuniary interest.
(See Appendix E for proposed form.)

Recommendation 19 — That the Municipal Conflict of Interest Act be amended to refer consistently to disclosure of pecuniary interest.

Recommendation 20 — That the Municipal Conflict of Interest Act be amended to require each municipal council, school board and local board to establish and maintain a central register of disclosures. The central register would contain the following:

- members' disclosure statements of assets and interests;
- members' statements of gifts and personal benefits;
- members' and advisors' disclosures of pecuniary interest; and
- any other records related to the duties of the member or advisor, or any by-laws or resolutions passed by the municipal council, school board or local board, as the case may be, declaring a community of interest or adopting higher or additional standards under the Act.

The central register of disclosures would be maintained by the municipal clerk, or appropriate school or local board official, and would be available to the public for viewing during normal office hours.

Recommendation 21 That the provisions in the Municipal Conflict of Interest Act which outline the duty of a member be amended to make it clear that a member who has a pecuniary interest in a matter must not attempt to influence any employee or member before, during or after the meeting.

Recommendation 22 That the Municipal Conflict of Interest Act be amended to provide for a quorum when the remaining number of members present, who are not disabled from participating, at a meeting is not less than one third of the total number of members of the body, but not less than two members.

Recommendation 23 That the Municipal Conflict of Interest Act be amended to allow for enforcement either through the court system or through the new enforcement mechanism outlined in recommendation 24. The new enforcement mechanism would relieve the elector of the responsibility of undertaking legal proceedings and the burden of associated costs.

Recommendation 24 That the Municipal Conflict of Interest Act be amended to provide for an enforcement mechanism using the following model:

Central Enforcement Body

A body, to be called the Municipal Conflict of Interest Commission, would administer enforcement of contraventions under the Municipal Conflict of Interest Act. The Commission would have the following structure, functions and powers:

Structure

- The Commission would be independent of any provincial ministry and would be directly responsible to the Ontario Legislature.

- The Commission would place an emphasis on service and access at the local level.

. The Commission would be structured such that it would not exercise a statutory power of decision.

Functions

. The basic functions of the Commission would be

- to provide advisory services for members and the public;
- to investigate and determine the validity of complaints regarding non-compliance with the Act;
- to make a decision and recommendations based on the facts of each complaint;
- to publish its decisions;
- to pursue complaints through the court system as deemed appropriate.

Powers

. The Commission would have the ability

- to investigate a written complaint filed by an elector or by a municipal council, school board or local board;
- to investigate a complaint on its own initiative;
- to determine the overall validity of the complaint; whether the complaint was made in bad faith, was frivolous or vexatious;
- to give a written decision after its investigation stating whether a contravention had occurred.

Other Duties

. The Commission would be required to give notice to the parties affected by or interested in any investigation.

. If, in the Commission's opinion, a contravention had occurred, the Commission could initiate legal proceedings. The Commission would act as the complainant in the court proceedings. Any penalties would be imposed and enforced by the courts.

Costs

. The complainant would not be responsible for costs associated with legal proceedings initiated by the Commission.

Appeal

. The Commission's decisions would not be subject to appeal, except by way of judicial review.

Limitation Period

. A complaint would have to be filed with the Commission within ninety days of the elector, municipal council, school board or local board becoming aware of the material facts, but no longer than three years after the alleged contravention had taken place.

Recommendation 25 That the Municipal Conflict of Interest Act be amended to remove the saving provisions of inadvertence and bona fide error in judgement and to provide for the following when a contravention is found:

- a declaration by a judge that a breach of the Act has occurred; and

- mandatory suspension from office, without pay or benefits, for a period of up to ninety days or a fine of up to $5,000; and

- mandatory restitution where the contravention has benefitted the pecuniary interest of the member, except where the judge finds no measurable pecuniary gain; and

- discretionary declaration of vacancy of the member's seat; and

- discretionary disqualification from office for a period of up to seven years.

Recommendation 26 That the present provisions in the Municipal Conflict of Interest Act regarding costs of legal proceedings be retained.

Recommendation 27 That the Municipal Conflict of Interest Act be amended to permit a municipal council, by by-law, and a school board or local board, by resolution, to establish higher and additional standards of conduct with respect to the duty of a member which are consistent with the purposes of the Municipal Conflict of Interest Act.

By-laws and resolutions for the establishment of higher and additional standards would be filed with the Municipal Conflict of Interest Commission and with the municipal clerk or appropriate school or local board official.

Recommendation 28 That the enforcement provisions of the Municipal Conflict of Interest Act apply to the additional standards of conduct for members adopted by a local government body.

Recommendation 29 That the Ministry of Municipal Affairs and the Ministry of Education, in coordination with the appropriate local government associations, develop appropriate educational materials and training programs for members and the public.

Recommendation 30 That the oaths of office in the Municipal Act and the Education Act be amended to state that the member has read and agrees to comply with the provisions of the Municipal Conflict of Interest Act.

Recommendation 31 That the Municipal Conflict of Interest Act be rewritten in plain language and be amended to include an index.

Recommendation 32

That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions be amended to prohibit a member from being employed by the municipal council, school board or local board on which she or he held office until a minimum of six months has passed after she or he leaves office.

Recommendation 33

That the Ministry of Municipal Affairs and the Ministry of Education, in consultation with municipalities, school boards, local boards and local government employee associations, develop a model code of conduct for employees of municipalities, school boards and local boards and school boards.

Recommendation 34

That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions be amended to require each municipal council, school board and local board to adopt the model code of conduct for employees within a specified period of time.

Each municipal council, school board and local board would have permissive authority to adopt higher and additional standards for employee conduct beyond those contained in the model code of conduct.

Recommendation 35

That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions be amended to regulate the acceptance of gifts and benefits in the same manner as the Members' Conflict of Interest Act, which regulates Members of the Ontario Legislature.

Members would be prohibited from accepting gifts or benefits except for those related to protocol or social obligation. Gifts or benefits of protocol or social obligation having a value greater than $200, or gifts and benefits of protocol or social obligation received from a single source during any twelve month period that exceed a value of

$200, would be reported in writing to the municipal clerk or appropriate school or local board official.
(See Appendix E for proposed form.)

Any donations contributed during the campaign period for election campaign purposes would continue to be subject to the Municipal Elections Act.

Recommendation 36

That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions, be amended to prohibit a member, or former member, from using confidential or privileged information gained while in office for the purposes of her or his own or another's financial gain or avoidance of financial loss, if at the time the information is used it is not public information, and to provide for the appropriate penalties.

Recommendation 37

That the oaths of office in the Municipal Act and the Education Act be amended to state that the member shall not, during or following her or his term in office, use confidential or privileged information for her or his own or another's financial gain or avoidance of financial loss.

Recommendation 38

That no amendments be made to the provisions of the Municipal Elections Act regarding receipt and reporting of municipal election campaign contributions.

Recommendation 39

That the Provincial Government act expeditiously in bringing forward legislative changes to the Municipal Act, the Education Act and other appropriate statutes related to local boards to provide for greater openness and accountability in the conduct of meetings by municipal councils, school boards and local boards.

Recommendation 40 That the Ministry of Municipal Affairs and the Ministry of Education strike a task force to examine further the issue of school board employees-members as it relates to municipal conflict of interest and to review the existing provisions for municipal employees and school board employees regarding eligibility to hold local government office.

Recommendation 41 That no restrictions be imposed on a member's employment activities outside of her or his duties of local government office.

MUNICIPAL CONFLICT OF INTEREST ISSUES

NAME OF STATUTE

Issue

Should the title of the statute, the Municipal Conflict of Interest Act, be changed?

Background and Discussion

The Act requires a member to make a disclosure of a pecuniary interest. Unfortunately, because the statute is entitled the Municipal Conflict of Interest Act, the member invariably discloses a conflict of interest. This creates a negative perception despite the fact that the member, having made the disclosure, has complied with her or his statutory duty. It was suggested to the Committee that renaming the statute to reflect more accurately the member's act of disclosure would address this problem.

Recommendation 1 **That the present title of the statute, the Municipal Conflict of Interest Act, be retained.**

Rationale

The Committee decided that the current title is well known to members and it holds a distinct meaning both with members and with the public. A change in title may result in unnecessary confusion in identifying the statute.

STATEMENT OF PURPOSE

Issue

The intent and key principles of the Municipal Conflict of Interest Act are not well understood by members and the public.

Background and Discussion

A common concern expressed to the Committee was that many members, as well as the public, do not clearly understand the purpose of the Act and the principles it embodies. Prefacing the Act with a statement of purpose would help members and the public better understand the concept of conflict of interest and the objectives of the Act itself.

Recommendation 2 **That the Municipal Conflict of Interest Act be amended to include, as section 1, a statement of purpose explaining that the intentions and principles of the Act are**

- **to preserve the integrity of the local government decision-making process;**
- **to ensure that members' personal pecuniary interests do not affect their public duties;**
- **to ensure that members do not use their public office to further their personal pecuniary interests;**
- **to provide a procedure for the disclosure of certain assets and interests by members;**
- **to provide a procedure for the disclosure of a pecuniary interest and for withdrawal from the decision-making process where the personal pecuniary interest of a member may conflict with the public interest and where the exceptions do not apply;**

- **to facilitate enforcement through the Municipal Conflict of Interest Commission, which would be empowered to enforce the Act and bear the associated costs;**

- **to provide remedies when a member does not disclose a personal pecuniary interest and withdraw from decision-making;**

- **to provide public access to the information required to determine the conduct of members and to enforce this Act.**

Rationale

The inclusion of a statement of purpose has recently been added to the statutory practice in Ontario. A statement of purpose in the Municipal Conflict of Interest Act would clearly articulate the intent of the legislation for the benefit of both members and the public and would provide for a better general understanding of the Act.

APPLICATION AND INTERPRETATION

Advisory Capacity

Issue

While it is clear that the Municipal Conflict of Interest Act applies to members of municipal councils, school boards, and local boards, its coverage with respect to members of advisory bodies is unclear.

Background and Discussion

The Act applies to members of municipal councils and local boards, including school boards, but it is not clear whether members of local government advisory bodies fall under the provisions of the Act. Recommendations to the Committee proposed that the Act be amended to make it clear that members of advisory groups or committees are exempt from the Act. It was suggested that the exemption is necessary in order for the advisory body to fulfil its function. Members of these bodies are appointed specifically because of their involvement and expertise in the field or issue so that the public might benefit from their insights and views on the matters being considered. It is essential that they express views which reflect their involvement and interest in the area; otherwise, the advisory body will not fulfil its mandate effectively. If members of advisory bodies were obligated to disclose a pecuniary interest on the matters being considered and withdraw from discussions, the body would have difficulty maintaining a quorum.

A related issue involves the definition of "local board". The definition of "local board" in the Act includes school boards and those bodies most commonly established to carry out affairs of the municipality. Several submissions questioned the status under the Act of local architectural conservation advisory committees (LACACs), which are not presently expressly included in the definition of "local board". Municipal councils have permissive authority to appoint a LACAC to advise and assist council in heritage conservation matters.

Recommendation 3

That the definition of "member" in the Municipal Conflict of Interest Act be amended to mean a person who is at any time entitled to participate in the decision-making process with respect to a matter under consideration, and to exclude a person acting solely in an advisory capacity.

The word "advisor" would be defined in the Act to mean a person who acts in an advisory capacity only. An advisor would not at any time be entitled to participate in the decision-making process or vote (except in an advisory capacity) with respect to a matter under consideration.

An advisor would be required to disclose a pecuniary interest and the general nature of the pecuniary interest in a matter under consideration and would be permitted to participate in the discussion of and voting on any such matter under consideration as long as such discussion or vote is with respect to a matter of advice only.

The details of the disclosure of a pecuniary interest and the general nature of the pecuniary interest disclosed by an advisor would be appended to any report or recommendation made by the body of which such person is a member in addition to being recorded in the minutes of the meeting at which the disclosure was made.
(See Appendix E for proposed form.)

Recommendation 4

That the definition of "local board" in the Municipal Conflict of Interest Act be amended to include all bodies acting in an advisory capacity to a municipal council, school board or local board.

Rationale

Problems arise where certain advisory bodies or committees are established primarily because of the members' special expertise, which may be directly connected to their pecuniary interest. In addition, the courts have on occasion expressed uncertainty in circumstances in which a member has been acting in an advisory capacity as distinct from a decision-making capacity. The revised definition of "member" would:

- exclude any member having a pecuniary interest in a matter under consideration from participating at any time in the decision-making process;

- require a disclosure of pecuniary interest by any other person acting solely in an advisory capacity to recognize that, although such a person may have a pecuniary interest in a matter, her or his input may be advantageous to the decision-making process;

- require the recording, in the report or recommendations, of the pecuniary interest of the person acting solely in an advisory capacity so that those to whom the advice is given are aware of the pecuniary influence.

In the Committee's view, these measures would underscore the accountability of local decision- making bodies for their decisions. Elected bodies, when making final decisions on matters, hold the ultimate political responsibility for those decisions. Requiring advisors to disclose and report their pecuniary interests would ensure that final decisions by elected bodies are made with a complete knowledge of the facts.

In regard to amending the definition of "local board", the inclusion of advisory bodies would make it clear that the provisions of the Act apply to members of such bodies, including LACACs.

Committee and Special Meetings

Issue

Does the Municipal Conflict of Interest Act apply to committee, sub-committee, and special meetings of municipal councils, school boards and local boards?

Background and Discussion

Subsection 1(h) of the Act defines meeting as "any regular, special, committee or other meeting of a council or local board ...." However, section 5, which sets out the member's duties of disclosure and abstention, refers only to a meeting of the council or local board. The decisions in Re Van Schyndel and Harrell[2] and Re Mangano and Moscoe[3] have raised the possibility that the member's duties under the Act might not apply to committee meetings.

Recommendation 5 **That section 5 of the Municipal Conflict of Interest Act be amended to make it clear that the Act applies to any regular, special, committee, sub-committee or other meeting of a municipal council, school board or local board.**

Rationale

The recommendation would make the reference to meeting in section 5 of the Act consistent with the definition and eliminate any future uncertainty with respect to the Act's application to committee, sub-committee, and special meetings of municipal councils, school boards and local boards.

---

[2]Ontario Court (General Division), Potts, J., June 25, 1991 (unreported)

[3] Ontario Court (General Division), Farley, J., July 23, 1991 (unreported)

Concept of Family

Issue

The concept of family in the Municipal Conflict of Interest Act is too narrow.

Background and Discussion

For the purpose of determining a deemed pecuniary interest, section 3 of the Act sets out the deemed pecuniary interest of the member to include her or his spouse, parents and children. Some submissions to the Committee suggested that the concept of the family be expanded to include brothers and sisters, because many people view their family units as including these people. Others recommended that the spouse of the member's child be included. It was also proposed that the provisions apply only to those relatives who live in the same household as the member.

Recommendation 6 — **That the Municipal Conflict of Interest Act be amended to include the pecuniary interest of the spouse of a member's child, if the pecuniary interest is known to the member, for the purpose of determining a deemed pecuniary interest of the member.**

Recommendation 7 — **That the Municipal Conflict of Interest Act be amended to include the pecuniary interest of the member's sibling(s) and the spouse(s) of the member's sibling(s), if the pecuniary interest is known to the member, for the purpose of determining a deemed pecuniary interest of the member.**

Rationale

The Committee is of the opinion that a significant familial relationship exists between a member and her or his sister(s) and/or brother(s) which may result in a real or perceived conflict of interest on the part of the member, thus warranting the inclusion of siblings for the purpose of determining a deemed pecuniary interest of the member.

In a spousal relationship, both partners may share the same economic domain; therefore, the pecuniary interests of one partner become the pecuniary interests of the other. This is the rationale behind the existing provisions, which deem that the pecuniary interest of a member's spouse is also that of the member. Including the spouse of the member's child in the concept of family would recognize that the spousal pecuniary interest of the member's child is also that of the member. The same rationale supports the inclusion of the spouse of the member's sibling.

Restricting the concept of family to those relatives who reside in the member's home would not eliminate a member's bias. A pecuniary interest is deemed to exist due to the familial relationship, not the physical proximity of the member to the relative. Accordingly, the Committee does not recommend this type of restriction for the concept of family.

Ex-officio Capacity

Issue

It is unclear whether a member who serves on a commission, board or other body in an ex-officio capacity is required to comply with the Municipal Conflict of Interest Act.

Background and Discussion

Subsection 4(h) of the Act states that a member is not required to disclose a pecuniary interest in a matter "by reason only of his being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality or local board or by reason only of his being a member of a board, commission, or other body as an appointee of a council or local board."

It is unclear to many people whether this exception applies to a member who sits on a local board ex-officio (by virtue of the member's public office) and not as an appointee. For example, in municipalities where there is a municipal public utilities commission, the mayor sits as a member of the commission ex-officio (by reason of being the mayor). Therefore, once elected as the head of council, the mayor automatically sits as a member on the public utilities commission as well. Ex-officio seats provide a valuable communication link between local government bodies.

Neither "appointee" nor "ex-officio" are defined in the Act. It can be argued that ex-officio powers arise by virtue of office without any appointment, and that the terms "appointee" and "ex-officio member" are distinguishable. Further, it is suggested that a member who is ex-officio by virtue of a statutory delegation need not automatically have an indirect pecuniary interest.

Recommendation 8 **That clause 4(h) of the Municipal Conflict of Interest Act be amended as follows:**

"The duties of the member under this Act do not apply to a pecuniary interest in any matter that a member may have,

- **by reason only of the member being a director or senior officer of a corporation incorporated for the purpose of carrying on business for and on behalf of the municipality, school board or local board; or**

- **by reason only of membership on a municipal council, school board, local board or commission, or other body when that membership is required by a statute or regulation because of a member's office on another municipal council, school board or local board; or**

- **by reason only of the member being a member of a board, commission or other body as an appointee of a municipal council, school board or local board."**

Rationale

Including a specific reference to members who sit by virtue of their office would clarify the perceived ambiguity raised in several submissions to the Committee.

French-language Section-School Board

Issue

The pecuniary interests of members of a French-language section of a school board may lead to reduced participation in the decision-making process due to the disclosure and withdrawal requirements.

Background and Discussion

Certain matters considered by French-language section of a school board must also be considered by the whole school board, including those in the French-language section. Many members of the French-language section have a deemed pecuniary interest because the interests of a relative are affected by the decisions of the section. The member's duty to disclose and withdraw result in low participation by members of the French-language section when these matters are under consideration at the board level.

Recommendation 9 **That the Municipal Conflict of Interest Act be amended to include an exception for a member of an English or French-language section of a school board when a matter related to language programming is under consideration by the school board.**

Rationale

The recommendation is intended to recognize the special circumstances where a school board is considering a matter which has been dealt with by its French-language section and would result in greater participation. At the time of writing this report, the Committee is aware only of the need for this recommendation as it relates to French-language sections of school boards. The Committee believes that a similar amendment should be provided for English-language sections of school boards.

Member's Volunteer and Community Activities

Issue

Are conflicts of interest related to a members' volunteer activities or involvement in community organizations covered by the Municipal Conflict of Interest Act?

Background and Discussion

The Act does not specifically address conflicts of interest relating to a member's volunteer activities or membership in service clubs and non-profit organizations. For example, should a council member who is an unpaid director on the board of a non-profit housing corporation be required to disclose a pecuniary interest and abstain from voting on the corporation's application for a re-zoning? Should a council member who belongs to a community organization be required to disclose a pecuniary interest and withdraw from voting on the organization's application for grant money?

It has been suggested that, provided the member receives no financial consideration for her or his volunteer or membership activities with the organization, the member should not be required to disclose a pecuniary interest in matters involving the organization. These circumstances may be interpreted as currently being excluded from the provisions of the Act because of a remote or insignificant pecuniary interest, but inclusion of a specific exception would remove uncertainty on this point.

Recommendation 10 **That the Municipal Conflict of Interest Act be amended to include an exception for members who have a pecuniary interest due to their volunteer activities or membership, or those of a relative as defined in the Act, in non-profit and not-for-profit community-based organizations, provided they receive no salary, remuneration or financial benefit from the organizations and provided the pecuniary interest of the member or defined relative is held in common with all members of such organization.**

Non-profit and not-for-profit community-based organizations would include, but not be limited to, a service club, a chamber of commerce, a board of trade, and the Royal Canadian Legion.

Rationale

The Act applies to the pecuniary interest of a member. Even though the pecuniary interest of a member serving in a volunteer capacity for a service club or a non-profit organization would probably be remote or insignificant, if it exists at all, the Committee recommends that a specific exception be included in the Act to make it clear that such service is not a pecuniary interest requiring disclosure. The Committee believes that this exception would further the public interest in relation to volunteer and community service by members.

Union and Professional Memberships

Issue

The pecuniary interest of members due to membership in trade unions and professional associations may lead to decreased participation in the decision-making process because of the member's duty to disclose and withdraw.

Background and Discussion

Many municipal council, school board and local board members have memberships in trade unions and professional associations. The memberships in trade unions may create pecuniary interest in matters under consideration by the local government body, because local government decisions may affect the interests of the trade unions. This has resulted in decreased participation by members. This problem is particularly evident in the area of school teachers' salaries because teachers often serve as school board trustees while at the same time holding membership in the Ontario Teachers' Federation (OTF). A similar situation may arise where a member is also a member of a professional association or like body.

It has been suggested that the Committee recommend an exception to the disclosure and withdrawal requirements when the pecuniary interest of the member exists only because of membership in the trade union or professional association, including the OTF.

Recommendation 11 **That the Municipal Conflict of Interest Act be amended to include an exception for members who have a pecuniary interest due only to membership in a trade union, including the Ontario Teachers' Federation, or a professional association.**

Rationale

The recommendation to provide the exception for membership in trade unions and professional associations, including the OTF, is aimed at reducing the number of disclosures of pecuniary interest, thereby allowing increased participation. The issue of school board members-employees is also addressed under the section **School Board Members-Employees**.

CONFLICT OF INTEREST

Issue

Should the term "conflict of interest" be defined in the Municipal Conflict of Interest Act?

Background and Discussion

Despite the title of the Act, the legislation does not contain a precise definition of "conflict of interest". Submissions from members and the public repeatedly urged that a concise definition of this key term be included in the Act so that members could more easily determine when they might have a conflict of interest.

The definition contained in the Member's Conflict of Interest Act, which applies to Members of the Ontario Legislature, was frequently recommended as a model to follow. The definition states that a member has a conflict of interest "when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest." The Committee also received suggestions to include examples of possible conflicts of interest in the definition to provide clearer guidance. These examples could be based, in part, on what the courts have determined to be conflicts of interest.

It was also suggested that the definition include the concept of moral or non-monetary conflict of interest of a member which could raise a presumption of bias. This would address situations where a member's personal or family interests of a non-financial nature could potentially compromise her or his actions. As an example, a member's family relationship with an employee could influence the member's decision-making on a matter involving the employee.

Other Jurisdictions

The New Brunswick legislation states that a conflict of interest exists if an "interest in a matter" before council would be of "financial benefit."

Recommendation 12 **That the Municipal Conflict of Interest Act be amended to include a definition of "conflict of interest" as follows:**

"For the purposes of this Act, a "conflict of interest" exists when a member who has a pecuniary interest in a matter fails to comply with a duty of a member under this Act."

Rationale

In order to provide clarity, the Committee recommends a definition explaining that a member with a pecuniary interest in a matter who does not disclose that interest when required, or who does not otherwise act in accordance with the Act, has a conflict of interest. In simple terms, a member who did not fulfil her or his duties under the legislation would have a conflict of interest.

The Committee agreed that it would be impossible to regulate non-pecuniary and moral conflicts of interest. Accordingly, the Act would continue to apply only to pecuniary interests.

PECUNIARY INTEREST

Issue

The Municipal Conflict of Interest Act does not define "pecuniary interest" or "direct pecuniary interest".

Background and Discussion

Under section 5 of the Act, the member has a duty to disclose her or his "pecuniary interest, direct or indirect, in any matter" being considered by the municipal council or local board. The Act also refers to a "deemed pecuniary interest" of the member. The Act, therefore, contemplates three kinds of pecuniary interest. It does not apply to interests of a non-pecuniary nature.

Pecuniary Interest

Although not specifically defined in the Act, the term "pecuniary interest" has received judicial consideration on many occasions. Generally, the courts have held that for an interest to be pecuniary in nature, it must be measurable in monetary terms. A pecuniary interest is not, however, necessarily a monetary advantage. It may apply to any situation of potential financial profit or loss, and also the maintenance of the member's existing financial position. The potential for monetary profit or loss is the key factor, for the courts do not generally consider whether there has been an actual financial impact.

Neither are the courts interested in whether a member exhibited bias in decision-making as a result of a pecuniary interest. Once a pecuniary interest is found to exist, whether it is direct or indirect, a presumption of bias is said to exist. A pecuniary interest must also be an already existing interest.

Under the Act, an indirect pecuniary interest is defined as follows:

> ... a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if
>
> (a) he or his nominee,

i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

ii) has a controlling interest in, or is a director or senior officer of, a corporation that offers its securities to the public, or

iii) is a member of a body, that has a pecuniary interest in the matter; or

(b) he is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

The term "controlling interest" is defined as "the interest that a person has in a corporation when he beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than ten per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding."

The term "senior officer" is defined as "the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a corporation or any other person who performs functions for the corporation similar to those normally performed by a person occupying any such office."

Other Jurisdictions

The Saskatchewan legislation defines pecuniary interest as "financial profit from a decision of council." The Manitoba legislation specifies that a direct pecuniary interest includes "a fee, commission or other compensation paid for representing interests of another person, corporation, partnership or organization."

Recommendation 13 **That the Municipal Conflict of Interest Act be amended as follows to include a definition of "pecuniary interest":**

"For the purposes of this Act, "pecuniary interest" means an interest consisting of money, measured in money or related to money (including a financial gain or an avoidance of financial loss), and includes the following:

a) a "direct pecuniary interest" which exists where the pecuniary interest is directly under the control of the member;

b) an "indirect pecuniary interest" which exists where the member or his or her nominee,

i) is a shareholder in, or a director or senior officer of, a corporation or agency that does not offer its securities to the public,

ii) has a controlling interest in, or is a director or senior officer of, a corporation or agency that offers its securities to the public, or

iii) is a member of a body that has a pecuniary interest in the matter; or

iv) is a partner or agent of a person who has a pecuniary interest in the matter; or

v) is in the employment of a person or body that has a pecuniary interest in the matter;

c) a "deemed pecuniary interest" which exists where the pecuniary interest of a parent, a spouse, a sibling, a child or the spouse of such child or sibling of the member is known to the member."

Recommendation 14 **That the Municipal Conflict of Interest Act be amended to refer consistently to pecuniary interest.**

Rationale

The Committee was repeatedly asked to provide a clear definition of the words "pecuniary interest" and the related subjects of "direct pecuniary interest" and "indirect pecuniary interest". While it has been argued that the word "includes" should be used in place of the word "means" to impart greater scope, such a definition has not been recommended as it would also contribute to uncertainty for a member attempting to comply with the Act. The recommended definition of "pecuniary interest" follows the interpretation of the term "pecuniary interest" in the Oxford Dictionary, incorporates the judicial approval given in Guimond v. Sornberger[4] and in Edmonton v. Purves[5], and excludes reference to words such as "profit", "financial profit", "benefit", "fees", "commissions", and similar words found in municipal conflict of interest legislation of other provinces which may limit the application of the Act.

It is further recommended that direct, indirect and deemed pecuniary interest be brought together under a single definition of "pecuniary interest". While the scheme of the current Act is to deal solely with pecuniary interest, it inconsistently refers to both "pecuniary interest" and "interest". The consistent use of the term "pecuniary interest" throughout the Act would avoid confusion.

---

[4] (1980) 115 Dominion Law Reports (3d) 321.

[5] (1982) 136 Dominion Law Reports (3d) 340.

REMOTE OR INSIGNIFICANT PECUNIARY INTEREST

Issue

In deciding whether to disclose a pecuniary interest, members are often uncertain whether pecuniary interests are so remote or insignificant that they do not require a disclosure.

Background and Discussion

The phrase "remote or insignificant" is not defined in the Act even though it is an important consideration in applying the exception under subsection 4(k). The exception states that a member is not required to disclose a pecuniary interest they have in a matter "by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member."

Many submissions requested that this term be clarified to assist both members and the public in recognizing when a conflict of interest may exist. The Committee received comments both in support of and in opposition to assigning dollar values to assist in determining whether a pecuniary interest is remote or insignificant.

Recommendation 15 **That the exception in the Municipal Conflict of Interest Act for a member's pecuniary interest which is "remote or insignificant" not be amended by assigning a dollar value to "remote or insignificant".**

Rationale

The term "remote or insignificant" is meant to relieve the member of complying with the Act's disclosure and withdrawal provisions in cases where the member's pecuniary interest is trivial or distant. Assigning dollar values would restrict the application of this exception. Further, given the differences between local jurisdictions, what is considered to be a modest dollar value in one municipal jurisdiction may not be viewed as such in another jurisdiction.

The section entitled **Members' Volunteer and Community Activities** also addresses this issue by making it unnecessary for a member to determine if a pecuniary interest arising because of a volunteer activity is remote or insignificant.

COMMUNITY OF INTEREST

Issue

The Municipal Conflict of Interest Act does not address situations where a disabling pecuniary interest arises due to the proximity of a member's residence to a matter under consideration. Nor does it deal with those instances when all members have a pecuniary interest in a matter which is repeatedly under consideration, as may be the case in a single-industry community.

Background and Discussion

The statute recognizes an "interest in common with the electors generally" as an exception from the disclosure requirements under clause 4(j) and further defines the words "interest in common with electors generally" in clause 1(e). In practice, however, the courts and members use the term "community of interest".

Under the current statute, disabling pecuniary interest frequently arises solely because of the proximity of a member's residence to a work or undertaking under consideration by the municipal council, school board or local board. Such interests have featured in a number of cases, for example, Re Graham and McCallion[6], Re Jackson and Wall[7], and Re Sheehan and Lisko[8]. The potential problem is further compounded where members are elected by ward or electoral zone, where the matter under consideration may involve a member's own residence.

In small municipalities, often dependent upon a single or limited local resource, all members of a municipal council, school board or local board may be involved in a pecuniary manner in a matter which frequently dominates the agenda. Tourism is one common example of such a matter. Members often serve in such communities because of their expertise in the dominant subject area and usually have a pecuniary interest in related matters. While the member's pecuniary interest is in common with a majority of electors in the municipality, it may not necessarily be an interest in common with all electors within the area of jurisdiction.

---

[6] (1982) 39 Ontario Reports (2d) 740.

[7] (1978) 21 Ontario Reports (2d) 147.

[8] County Court, 1983 (unreported)

Recommendation 16 **That the Municipal Conflict of Interest Act be amended to change the term "interest in common with the electors generally" to "community of interest in common with the electors generally". This revised definition would include a special procedure allowing members, after disclosing their interest, to participate. The revised definition would:**

- **specifically refer to and exempt from the Act under the heading of "community of interest" a member's pecuniary interest by reason only of that member's occupancy of a residential property which is or may be affected by the decision of the municipal council or the local board in common with other electors in the area of jurisdiction or part of the area of jurisdiction;**

- **give municipal councils, by by-law, and school boards and local boards, by resolution, permissive authority to determine in advance a "community of interest" where a majority of the members have a pecuniary interest in the matter under consideration;**

- **ensure that the existence of the member's pecuniary interest in the above [illegible] known to the public by requiring the member to disclose the pecuniary interest while allowing the member to participate in discussion and voting on the matter.**

Rationale

The amended definition adopts the current term, "community of interest", and extends its definition to include those circumstances, described above, which might give rise to a disabling pecuniary interest. While addressing those circumstances where the member's residence is affected, the recommendation limits the exception to circumstances of a community of interest in common with the electors generally and excludes specific circumstances, such as the sale of the member's own property or any directly related matter.

In addition, the municipal council, school board and local board are given permissive authority to determine a community of interest by by-law or resolution, as the case may be, in instances where a significant number of members have a pecuniary interest in a matter in common with electors generally.

DISCLOSURE OF ASSETS AND INTERESTS

Issue

The requirement that members provide public disclosure of their financial assets, liabilities, and interests is a sensitive issue that raises serious questions around individual and collective rights. In considering the merits of disclosure, the public's right to know must be balanced with the member's right to personal privacy.

Background and Discussion

At this time, the Act does not require members to publicly disclose their financial assets, liabilities and interests. Opinion expressed to the Committee on this issue was strongly divided. Many people felt that written disclosure statements would assist the public in determining whether a member was in a conflict of interest situation, and would enhance members' awareness of their obligations under the Act. However, a comparable number of submissions stated that the benefits of disclosure statements were unproven and that the requirement constituted an unwarranted invasion of personal privacy.

Those in support of public disclosure believe it is a reasonable requirement that does not impose an undue invasion of personal privacy. It is generally accepted that people choosing to serve the public must give up a certain degree of personal privacy due to the very nature of public office and the public scrutiny it brings.

Opponents of public disclosure expressed serious concern that the requirement would discourage individuals from seeking office, for reasons of both privacy and complexity. This concern was particularly prevalent in small municipalities, where many members serve on a volunteer basis and view the proposal as onerous and overbearing.

In reviewing the issue of disclosure, two related matters emerged: the extent of the disclosure and to whom the requirement for disclosure should apply. In regard to extent of disclosure, the Committee received numerous suggestions ranging from full and detailed disclosure of all assets, liabilities, and interests, including monetary value, to no disclosure requirements of any kind.

Included in the range of suggestions was a limited disclosure of real property assets only.

This proposal is based on the fact that the overwhelming majority of conflict of interest complaints relate to real property matters. It was proposed, therefore, that as a minimum, disclosure should focus on the member's real property interests. In general, people do not object to this principle because information of this kind is available to the public through the local registry office.

With respect to application, many felt that the requirement for disclosure should apply only to the member, while others argued for coverage of relatives as well. The Act currently refers to the member's parent, spouse and child for the purpose of establishing deemed pecuniary interests of the member. It was suggested that this should be a consideration in deciding to whom the disclosure requirement should apply.

Submissions made in favour of disclosure recommended that members be required to file a written statement of assets and interests with the municipal clerk or appropriate school or local board official when they take office (usually within sixty to ninety days), and that the statement be updated annually, or upon any significant change in financial status. It was proposed that these statements would be kept in the municipal offices and be available for viewing by the public. It was also suggested that members who failed to file should be made subject to fines and/or disqualification.

As an alternative to financial disclosure, several submissions suggested that members be required to place their assets in a blind trust upon assuming office. This would involve transferring all financial shares to a trustee to manage on behalf of the member. By placing her or his assets in a blind trust, the member has no knowledge of the worth of those assets at any point in time.

Other Jurisdictions

Four provinces, Manitoba, British Columbia, New Brunswick, and Quebec, require municipal council members to file disclosure statements. The New Brunswick legislation also requires the disclosure of assets of the member's spouse and children. In Newfoundland, Saskatchewan, and Alberta, municipal councils may decide whether to require disclosure of assets and interests by members.

The Commission on Conflict of Interest (Ontario) receives and reviews provincial members' private disclosure statements containing detailed information on income, assets, liabilities and financial interests of members, their spouses and minor children. The Commission prepares a public disclosure statement containing information on limited assets, such as real property holdings. The value of the assets and financial interests are not included.

Recommendation 17

That the Municipal Conflict of Interest Act be amended to require each member of a municipal council, public utilities commission, land division committee, committee of adjustment, planning board, planning advisory committee, conservation authority or school board, to file a disclosure statement of certain assets and interests with the municipal clerk or appropriate school or local board official within sixty days after election or appointment.

The disclosure statement of certain assets and interests would apply to each member and her or his spouse and would contain:

- **the municipal address of real property holdings, including ownership and equitable and leasehold interests in real property, within or adjacent to the area of jurisdiction;**

- **the municipal address of real property within or adjacent to the area of jurisdiction in which an interest in a mortgage or charge is held.**

The member would be required to file a supplementary disclosure statement within thirty days of any change in status of such assets or liabilities.
(See Appendix E for proposed form.)

Rationale

In proposing a limited disclosure statement, the Committee recognizes that the majority of conflict of interest situations involve property matters, and that the principal issues of public concern relate to real property. It is the intention that the disclosure statement contain the physical details of the property holdings, but that the member not be required to disclose the extent of the financial interest in the real property.

The rationale for not requiring the dollar value of assets and interests is the recognition that ownership of assets and existence of liabilities are the operative considerations in determining a conflict of interest, rather than the actual dollar value of these assets and liabilities. The items subject to disclosure would be restricted to real property since property matters most often give rise to conflict of interest situations. A limited disclosure statement would strike an acceptable balance between the public's desire for a means to monitor a member's interests and the member's right to privacy.

The requirement would apply to those members who act in a decision-making capacity and to members of those land-related bodies instrumental in the decision-making process. Further, spouses' disclosure would also be required, given the considerations of the spousal relationship and the fact that a spouse's dealings in real property might give rise to a conflict of interest for the member.

While a blind trust would provide regulation of the member's financial shares, it would not address assets and liabilities, nor would it give the public any indication of the member's pecuniary interests. Further, this requirement would place an excessive obligation on members and would most likely discourage many from seeking public office.

In considering a recommendation on this issue, the views of the Committee are diverse. Some committee members voiced concern that the limited disclosure requirements would serve no practical purpose and might be seen as only a token measure on two grounds. First, the proposed requirements would apply only to the member and her or his spouse; therefore, the pecuniary interests of the member's other family relatives, which are covered by the Act, would not be addressed through the disclosure requirements. Second, the proposed limited disclosure does not include all items, such as land-related business interests, of the members and her or his spouse which can lead to conflicts of interest.

The Committee has decided to recommend requirements for partial disclosure because they would assist significantly in policing the activities of members, regardless of the limited nature of the disclosure. The types of assets and interests to be disclosed and the individuals to be covered reflect the public's concern that, at a minimum, a member's interests in real property should be disclosed.

DISCLOSURE OF PECUNIARY INTERESTS

Issue

The provisions in the Municipal Conflict of Interest Act regarding disclosure of pecuniary interest require clarification.

Background and Discussion

Section 5 of the Act requires the member to declare and describe orally the general nature of a financial interest in a matter before the municipal council, school board or local board, and to abstain from participating in the decision-making process. If the meeting is not open to the public, the member must leave the meeting room when the matter is being considered.

The Act clearly states that a member must describe the general nature of her or his interest at the time of disclosure, but in practice many members fail to provide a sufficient description of the nature of the interest. For the most part, this seems to be due to a lack of understanding as to what constitutes a description of a general nature. The Act does not intend that the member provide detailed information about the interest, but to simply describe it in a general manner. As an illustration, if municipal council was considering contracting with a company which employed a member, a statement to that effect including the member's position would be a satisfactory level of detail for the disclosure.

In order to assist members in complying with these provisions, several local government bodies have developed a written form for disclosure of interest which members complete before the meeting. The form states the interest of the member and provides a brief description of the interest in general terms. The written disclosure also avoids problems of omission or interpretation when being recorded in the meeting minutes.

Currently, a member's disclosure of pecuniary interest is recorded in the minutes of the meeting. The Committee heard repeated requests for the establishment of a separate register of members' disclosures of pecuniary interest. Many felt that a consolidated list of

disclosures would assist people in monitoring the behaviour of members with pecuniary interests in matters before the municipal council or local board. Others viewed this is an added administrative burden.

A related issue involves the member's access to legal counsel. Presently, it is incumbent upon the member to obtain independent legal advice to determine whether she or he has a pecuniary interest subject to the requirements of the Act. Many members consult their solicitor in this manner before disclosing their pecuniary interest in a matter under consideration. For reasons of economy and expediency, it has been argued that members should be permitted to obtain legal counsel from the municipal solicitor. Presently, municipal solicitors may only advise the municipal council as a whole, and not as individuals. However, recognizing that most municipalities, school boards and local boards do not have in-house legal counsel, this proposal would benefit a limited number of members only.

Other Jurisdictions

Manitoba, New Brunswick, Alberta and Nova Scotia legislation require the member to withdraw from open as well as closed meetings.

Recommendation 18 **That the Municipal Conflict of Interest Act be amended to require a member to make a verbal disclosure of a pecuniary interest and to file a written disclosure of the pecuniary interest with the municipal clerk or appropriate school or local board official.**

The written disclosure would state the member's pecuniary interest in the matter and provide a general description of the nature of the pecuniary interest.
(See Appendix E for proposed form.)

Recommendation 19 **That the Municipal Conflict of Interest Act be amended to refer consistently to disclosure of pecuniary interest.**

Rationale

A standard written form for disclosures of pecuniary interest prescribed under the Act would give the member clear direction in describing the nature of the pecuniary interest and would provide a concise statement to include in the meeting minutes. While disclosures of pecuniary interest would continue to be recorded in the minutes of the meeting, the completed forms would form a separate document or register. The register would enable both members and the public to monitor disclosures of pecuniary interest over the long term.

In regard to legal counsel, allowing the member to obtain advice from in-house counsel would, in the Committee's opinion, place the solicitor in an awkward and untenable position since, as an employee, she or he may be subject to influence or pressure from the member. Such a relationship would violate the legal profession's established principles of ethics. Further, under section 12 of the Act, counsel is responsible for advising the local government body as a whole in instances where a member has contravened the Act. Acting on behalf of an individual member would clearly compromise this responsibility.

The word "disclosure" means to reveal or make known. Amending the Act to refer consistently to "disclosure of pecuniary interest" (rather than "declaration of pecuniary interest") would remove any confusion that may presently result from using the two terms and would reflect more accurately the action of the member in complying with her or his duty.

CENTRAL REGISTER OF DISCLOSURES

Issue

A consolidation of all records related to the duties of the member, or the municipal council, school board or local board under the Municipal Conflict of Interest Act is needed to assist individuals in monitoring conflict of interest.

Background and Discussion

As a means of consolidating members' disclosure statements of assets and interests, disclosures of pecuniary interests, and any related information, the concept of a central register of disclosures has been developed. A central register of disclosures was recommended by the Association of Municipalities of Ontario Municipal Conflict of Interest Committee, 1979, but the recommendation was not included in the amendments to the Act in 1983.

Other Jurisdictions

Manitoba, New Brunswick and Nova Scotia have adopted the central register of disclosures.

Recommendation 20 **That the Municipal Conflict of Interest Act be amended to require each municipal council, school board and local board to establish and maintain a central register of disclosures. The central register would contain the following:**

- **members' disclosure statements of assets and interests;**
- **members' statements of gifts and personal benefits;**
- **members' and advisors' disclosures of pecuniary interest; and**

- **any other records related to the duties of the member or advisor, or any by-laws or resolutions passed by the municipal council, school board or local board, as the case may be, declaring a community of interest or adopting higher or additional standards under the Act.**

The central register of disclosures would be maintained by the municipal clerk, or appropriate school or local board official, and would be available to the public for viewing during normal office hours.

Rationale

The central register would provide a snapshot of each member's required disclosures and a means for the public to monitor more easily the actions of members relative to conflict of interest. The document would be divided into sections corresponding to the different types of disclosure statements required under the Act. It would also contain any other records related to the regulation of conflict of interest as determined individually by municipal councils, school boards or local boards through the adoption of higher or additional standards as discussed under the section **Option for Higher Standards**, or the declaration of a community of interest as outlined in the section **Community of Interest**.

INFLUENCE

Issue

The Municipal Conflict of Interest Act does not place sufficient emphasis on the members' duty not to influence decision-making in a matter in which they have a pecuniary interest.

Background and Discussion

Under section 5, Duty of a Member, the Act prohibits a member from exerting influence "before, during or after a meeting." The location of this provision in the disclosure requirements for a meeting has caused some confusion as to its application before and after a meeting. It is not clear how long before the meeting a member must refrain from influence, or whether discussions with employees qualify as influence. Several submissions to the Committee expressed concern with the potential for members to exert influence on employees, both before and after a meeting.

Also in regard to the prohibition, it was suggested that once a member had disclosed her or his pecuniary interest at an open meeting, the member should have the same opportunity as any other elector to speak to the matter under consideration. This could be achieved by permitting the member sit in the public gallery of the meeting room and proceed to speak to the matter being considered. The municipal council, school board or local board would take the member's vested interest into account when considering the member's comments on the matter.

This restriction is the only respect in which a member is not granted the same rights as an elector. The courts have been divided on the issue of whether, in these circumstances, a member should have the same rights as an elector. Some oppose this proposal because it would allow the member to influence the outcome of discussions on the matter, which is contrary to the intent of the Act. Further, it was suggested that members who have stated their pecuniary interest should be required to leave the meeting because their mere presence could serve to influence the outcome of discussions.

Other Jurisdictions

The Manitoba legislation contains a detailed provision prohibiting the use of influence by a member with a pecuniary interest in a matter being considered. The Member's Conflict of Interest Act provincial legislation contains a provision prohibiting influence before, during, and after a meeting similar to the one found in the Municipal Conflict of Interest Act.

Recommendation 21 **That the provisions in the Municipal Conflict of Interest Act which outline the duty of a member be amended to make it clear that a member who has a pecuniary interest in a matter must not attempt to influence any employee or member before, during or after the meeting.**

Rationale

The recommendation would make it clear that a member must not influence the voting on a matter at any time or in any manner. The Committee believes that the current requirements for the member to disclose her or his pecuniary interest and withdraw from decision-making are sufficient safeguards against influence at the meeting, and therefore, does not recommend that the member also be required to leave the meeting room. A more stringent requirement in this area could be adopted at the discretion of the municipal council, school board or local board as a higher or additional standard as discussed under the section **Option for Higher Standards**.

The suggestion to permit the member after declaring her or his pecuniary interest to speak to the matter in the same manner as any other elector is not supported by the Committee. Such a provision would be contrary to the Act's key objective, namely to prevent the member from influencing any matter in which she or he has a pecuniary interest, because in many cases the member's disclosure of pecuniary interest would not be a sufficient safeguard against influencing decision-making at the meeting.

LACK OF QUORUM

Issue

The Municipal Conflict of Interest Act provisions to remedy a lack of quorum caused by a member's disclosure of pecuniary interest are inadequate.

Background and Discussion

Section 7 of the Act addresses situations where a municipal council, school board or local board lacks a quorum due to a disclosed pecuniary interest. The existing provisions are inadequate, for they do not recognize the difference in the number of members required to constitute a quorum on three-member local boards and commissions, five-member municipal councils, larger municipal councils (including regional and county councils) and school boards having many members.

Recommendation 22 **That the Municipal Conflict of Interest Act be amended to provide for a quorum when the remaining number of members present, who are not disabled from participating, at a meeting is not less than one third of the total number of members of the body, but not less than two members.**

Rationale

As a result of this amendment, the quorum provisions would relate directly to the number of members required for the original quorum of the body, and past problems in this area would be eliminated.

ENFORCEMENT

The enforcement provisions under the Municipal Conflict of Interest Act have been criticized for being inappropriate, ineffective, onerous and expensive. The issue of enforcement is a broad one, and includes the method of enforcement, the associated costs, and the applicable penalties.

Method of Enforcement

Issue

A primary objective of the Act is to enhance the public's confidence in the decision-making practices of our local government bodies. It is unreasonable, therefore, to place the responsibility for enforcement on the individual elector, as is presently the approach under the Act. Upon initiation of legal proceedings by the elector, enforcement of the Act proceeds through the judicial system.

There are a host of problems associated with this method, most notable being the substantial delays and excessive costs encountered in taking legal action due to the volume of matters before the courts. In discussions with the Honourable Gregory Evans, Conflict of Interest Commissioner (Ontario), Mr. Evans emphasized that timely resolution of complaints and consistent application of the legislation are of paramount importance in developing an effective enforcement mechanism.

Background and Discussion

Existing Legislation

Under section 9 of the Act, an elector may apply to a judge of the Ontario Court of Justice for a determination as to whether a contravention of the Act has occurred. The elector must make the application within six weeks of learning of the alleged contravention and no action can be initiated once six years have passed from the time the contravention is alleged to have taken place. The Act does not provide local government bodies with the right to bring legal action against their members.

In pursuing an action through the courts, the elector faces a process fraught with numerous procedural difficulties and legal complexities. Consequently, most individuals engage legal counsel, which results in the potential for significant financial costs to the individual. There is general consensus, however, that these features prevent frivolous and unfounded complaints.

In submissions to the Committee, the overwhelming majority of members and citizens both agreed that an alternative method for enforcement was needed to address contraventions under the Act effectively. In view of this, maintaining the status quo was not considered by the Committee to be an acceptable option. Many people recommended the establishment of an independent body, stressing that impartiality and objectivity are central to effective enforcement of the Act. Others were of the opinion that enforcement should be carried out locally for reasons of accessibility and accountability. The following range of options for an improved enforcement process contain these features in a variety of forms. They are based primarily on existing mechanisms in place at other levels of government and in different jurisdictions.

Decision-making Body at the Provincial Level - Under this option, a specialized, central body would be established at the provincial level to oversee municipal conflict of interest matters. The independent body would be viewed as acting objectively in resolving local issues and would ensure uniform application of the Act across all local jurisdictions. Removing initial enforcement of the Act from the court system would also contribute to a speedier resolution of complaints.

In addition to enforcement, many people recommended to the Committee that the decision-making body be given responsibility for advising local government members and the public on specific questions regarding conflict of interest. It was proposed that providing members with guidance in declaring conflicts of interest would reduce the incidence of misinterpretation of the Act. However, others expressed concern that the body's impartiality could be compromised in carrying out both advisory and enforcement functions. In this regard, it was suggested that it would be improper for a body to investigate a complaint relating to a situation on which it previously gave advice.

Establishing a decision-making body at the provincial level would result in many positive improvements to the enforcement of the Act, in particular, relieving the elector of the burden of undertaking legal proceedings. During the public consultation, the Committee heard repeatedly that this requirement discouraged and prevented many individuals from initiating actions against members. It is reasonable to assume, therefore, that the establishment of a central body would result in a significant increase in the number of applications under the Act.

In view of this, it was suggested that the central model could be modified to include a local screening mechanism. Through the screening process, the merit of each complaint would be assessed before referral to the central body. This first level review would enable the central body to remain administratively streamlined and operate with limited resources.

It has been suggested that the local government bodies themselves would be an appropriate vehicle for this type of screening process. Municipal councils, school boards and local boards would be well positioned to determine the validity of an elector's complaint; information and documentation related to the alleged conflict of interest would be available from the administration and from among the members themselves, and the council or board as a whole could benefit from the legal advice of its solicitor.

This locally-based mechanism introduces the concepts of peer review and self-policing into the enforcement process, which do not presently exist under the Act. Many feel that vesting this responsibility with local government bodies is an important contributing factor to ensuring accountability and ethical behaviour by members. However, others believe that municipal councils, school boards and local boards may not act objectively when considering the facts related to a fellow member.

Justice of the Peace - As an alternative to establishing a quasi-judicial body at the provincial level, the same investigative and decision-making powers could be conferred on a judge. A legal action under the Act would follow existing court procedure. This model could function independently or could incorporate the local screening mechanism outlined above.

Conflict of Interest Commission (Ontario) - As an extension of the central model, the responsibilities of the Conflict of Interest Commission (Ontario) could be expanded to include

the regulation of municipal conflict of interest. This is an alternative to establishing an entirely new central body with the associated cost and time considerations. Additional benefits would be realized in utilizing the Commission's existing expertise. The Commission would receive complaints directly from individuals and/or would act on referrals through the local screening process.

Municipal Councils and Local Boards - Another approach to improving enforcement of the Act would be to change the existing method to allow local government bodies, in addition to individuals, to undertake legal proceedings for alleged contraventions by a member. Although this model would remove the burden of legal proceedings from the individual, it would still be subject to the shortcomings of the existing method related to the judicial system.

Under this option, the municipal council, school board, or local board could initiate legal proceedings upon the request of an elector, either through a petition or an individual complaint. Electors could be required to pay a filing fee or deposit to discourage frivolous or vexatious complaints. Local government bodies would also act on their own initiative, by by-law or resolution. Further, the Act could make it incumbent on members to bring forward any knowledge of possible contraventions by fellow members. Placing this fiduciary duty on members would strengthen this self-policing responsibility. Members who failed to carry out their fiduciary responsibilities could be made subject to penalties under the Act. Opponents of this model believe that it is inappropriate for a governing body to judge its own members and that complaints would not be dealt with in an objective manner.

Attorney General - Under this option, the Attorney General would be given specific authority to bring a legal action against a member through the courts. Upon receipt of a complaint, the Attorney General would examine the facts of the case and proceed with prosecution accordingly. This proposal was recommended by the AMO Conflict of Interest Committee in its 1979 report.

This recommendation has some obvious benefits. First, the elector would be relieved of the burden of enforcement. Second, the required expertise, structure and processes for investigating allegations are already in place within the Ministry of Attorney General.

Conversely, several arguments have been made against the proposal. For the most part, these involve concerns that intervention by the provincial government, through the Attorney General, would be viewed as an unwarranted provincial intrusion into local issues.

Ministry of Municipal Affairs - The Committee heard in numerous submissions that the responsibility for enforcement of the Act should rest appropriately with the Ministry of Municipal Affairs. Under this proposal, the Ministry would be empowered to initiate legal proceedings through the court system. The Ministry would act on a complaint-driven basis and/or its own initiative. This approach would relieve electors of enforcement responsibilities; however, it would still be susceptible to the drawbacks of the existing procedures through the court system.

Other Jurisdictions

In the provinces of Alberta, Manitoba, Nova Scotia and Quebec, both electors and municipal councils have the right to bring legal action against members. The Quebec and Nova Scotia legislation also give the Attorney General the authority to take a member of municipal council to court for an alleged contravention.

In Ontario, an independent commission was established in 1988 to regulate conflict of interest for members of the Ontario Legislature. The Commission on Conflict of Interest (Ontario) is the only ethics commission in Canada; however, British Columbia established a conflict of interest commissioner in 1990.

Recommendation 23 **That the Municipal Conflict of Interest Act be amended to allow for enforcement either through the court system or through the new enforcement mechanism outlined in recommendation 24. The new enforcement mechanism would relieve the elector of the responsibility of undertaking legal proceedings and the burden of associated costs.**

Recommendation 24 **That the Municipal Conflict of Interest Act be amended to provide for an enforcement mechanism using the following model:**

Central Enforcement Body

A body, to be called the Municipal Conflict of Interest Commission, would administer enforcement of contraventions under the Municipal Conflict of Interest Act. The Commission would have the following structure, functions and powers:

Structure

- **The Commission would be independent of any provincial ministry and would be directly responsible to the Ontario Legislature.**

- **The Commission would place an emphasis on service and access at the local level.**

- **The Commission would be structured such that it would not exercise a statutory power of decision.**

Functions

- **The basic functions of the Commission would be**

  - **to provide advisory services for members and the public;**

  - **to investigate and determine the validity of complaints regarding non-compliance with the Act;**

  - **to make a decision and recommendations based on the facts of each complaint;**

  - **to publish its decisions;**

  - **to pursue complaints through the court system as deemed appropriate.**

Powers

- **The Commission would have the ability**

- to investigate a written complaint filed by an elector or by a municipal council, school board or local board;

- to investigate a complaint on its own initiative;

- to determine the overall validity of the complaint; whether the complaint was made in bad faith, was frivolous or vexatious;

- to give a written decision after its investigation stating whether a contravention had occurred.

Other Duties

. The Commission would be required to give notice to the parties affected by or interested in any investigation.

. If, in the Commission's opinion, a contravention had occurred, the Commission could initiate legal proceedings. The Commission would act as the complainant in the court proceedings. Any penalties would be imposed and enforced by the courts.

Costs

. The complainant would not be responsible for costs associated with legal proceedings initiated by the Commission.

Appeal

. The Commission's decisions would not be subject to appeal, except by way of judicial review.

Limitation Period

. A complaint would have to be filed with the Commission within ninety days of the elector, municipal council, school board or local board becoming aware of the material facts, but no longer than three years after the alleged contravention had taken place.

Rationale

The Committee's recommendations are intended to provide two avenues for enforcement. The existing process through the court system would remain available to the elector. In order to provide electors with an alternative remedy for their complaints, the creation of an independent enforcement body, the Municipal Conflict of Interest Commission, is proposed. The Committee recommends that the Commission operate independently. The reason is to free the Commission from real or perceived outside influences at the provincial and local levels and to enable the Commission to carry out its functions objectively and fairly.

Through this mechanism the costs of enforcement would be shifted from the individual complainant to the Commission. In addition, it is intended that the Commission should provide a speedier and less costly means of determining a contravention. This should result in improved access to justice for the elector, both because the elector would no longer be faced with substantial legal costs, and because the overall process would be faster. Individuals who were not satisfied with the decision of the Commission would have the option of pursuing the matter separately through the courts.

Municipal councils, school boards and local boards would be given the authority to initiate complaints in the same manner as individual electors. This is intended to give municipal councils, school boards and local boards the ability to police themselves.

In addition, to address the public need for information and advice, the Commission would be given an advisory function for both members and the public. The Commission would publish an annual report reviewing its decisions, and any other instructional material helpful to members and the public in understanding the Act.

The Committee recognizes that the establishment of a new enforcement body would result in added costs, but is of the opinion that the need to enforce this important piece of legislation effectively outweighs the cost implications. In the past, the Act has not been properly enforced, and in certain respects this has brought local government decision-making into some disrepute. The informal and streamlined operation of the Commission should keep administrative costs to a minimum.

It is also the view of the Committee that, although the Commission would not enforce its

decisions, its effectiveness would be assured because of its ability to proceed to the courts on its own initiative. Further, if the Commission were given the authority to impose penalties, its decision-making procedures would need to be more complex, and the benefits of speed and informality would be sacrificed.

Penalties

Issue

The penalties for contraventions of the Municipal Conflict of Interest Act have been criticized for being too stringent. Further, the Act is viewed as giving the courts too much discretion in using the saving provisions as a way of reducing the severity of the penalties.

Background and Discussion

In finding a member in breach of the Act where the saving provisions do not apply, a judge

- shall declare the member's seat on the local government body vacant;
- may disqualify the member or former member from holding office on the local government body for up to seven years;
- may require the member or former member, if she or he gained financially, to pay restitution to the party that suffered the financial loss or to the local government body.

If the judge finds that a conflict of interest has occurred either through inadvertence or by reason of bona fide error of judgement, the judge can decide not to impose a penalty.

The saving provisions of inadvertence and bona fide error have distinctly different meanings. Generally speaking, inadvertence refers to an individual's actions due to ignorance of the law, carelessness, neglect or inattention. It is important to note that in finding a member in contravention of the Act through inadvertence, the member must have demonstrated good faith.

The term "bona fide error in judgement" is broader in meaning and relates to situations where the member honestly believed she or he were acting legally. Again, good faith must be present. Case law indicates that members who have contravened the Act after following the advice of a lawyer are often excused by reason of bona fide error. Although obtaining a legal opinion is not a guarantee that the member will be excused by reason of bona fide error, the absence of legal counsel will likely preclude the use of this saving provision.

In twenty-eight court cases heard in Ontario since 1972, it was determined that a contravention of the Act occurred in twenty-five cases. In those cases where a contravention was proven, the majority of members were excused from the penalties for reasons of inadvertence or bona fide error in judgement.

These results indicate an apparent reluctance on the part of the courts to impose the penalty provisions. In particular, this appears to be the case with the mandatory section requiring a member to vacate her or his seat if found to be in breach of the Act or the stiffer penalty of disqualification from office. Submissions to the Committee have stated that the courts have viewed this penalty as being too severe and, as a result, members who have clearly contravened the Act have been excused.

It was argued before the Committee that the court's rulings on penalties have undermined the effectiveness of the Act because they are contrary to the very intent of the legislation. It is reasonable to expect that contraventions will occur for reasons of bona fide error and inadvertence; however, application of the saving provisions should only be used when good faith has been proven conclusively, rather than as a standard rule. The range of suggestions aimed at ensuring the integrity of the legislation and providing an appropriate remedy for contraventions included the imposition of stiffer penalties, mandatory restitution by the member, and discretionary removal of the member from her or his seat.

Other Jurisdictions

Penalties in other provinces include ten years of disqualification and a $25,000 fine in Nova Scotia, to a vacant seat and restitution in Manitoba, to one year imprisonment in New Brunswick. Under the Nova Scotia legislation, disqualified members cannot fill the same seat from which they were removed. In the provinces of British Columbia, Alberta and Quebec, a member who has been convicted under the Criminal Code is disqualified from office.

Alberta, Manitoba, Saskatchewan and Nova Scotia have saving provisions which include both inadvertence and bona fide error in judgement. The Quebec and New Brunswick legislation contain exemptions for mere inadvertence and minor interest insufficient to influence, respectively.

If the Commission on Conflict of Interest (Ontario) finds that a provincial member has contravened the legislation, the Commission may recommend that the member be reprimanded or that the member's seat be declared vacant until an election is held in the member's electoral district. The recommendation for penalties are made to the Legislative Assembly, which has six months to consider the Commissioner's report and either implement or reject the recommendations.

Recommendation 25 **That the Municipal Conflict of Interest Act be amended to remove the saving provisions of inadvertence and bona fide error in judgement and to provide for the following when a contravention is found:**

- **a declaration by a judge that a breach of the Act has occurred; and**
- **mandatory suspension from office, without pay or benefits, for a period of up to ninety days or a fine of up to $5,000; and**
- **mandatory restitution where the contravention has benefitted the pecuniary interest of the member, except where the judge finds no measurable pecuniary gain; and**
- **discretionary declaration of vacancy of the member's seat; and**

- **discretionary disqualification from office for a period of up to seven years.**

Rationale

The Committee agrees that the defences of inadvertence and bona fide error in judgement have been used too liberally due to the severe consequences of mandatory declaration of vacancy of the member's seat. The Committee wishes to give a judge the alternative of less severe penalties, but at the same time, wishes to ensure that those who have breached the Act do not escape penalty.

In balancing the above considerations, the Committee believes that a suspension or fine is a significant consequence and should be imposed in all cases where a contravention has occurred. Similarly, in cases where a member has profited from a breach, the Committee thinks it appropriate that restitution be mandatory. A mandatory penalty, tied with a declaration of breach, should also alter the public perception caused by the frequent use of the saving provisions that members contravening the Act are not being penalized.

Legal Costs

Issue

Recent court decisions indicate that there are considerable financial risks for individuals undertaking legal proceedings for alleged conflict of interest contraventions. While this may discourage frivolous or unfounded allegations, placing this financial onus on the individual discourages enforcement of the Municipal Conflict of Interest Act.

Background and Discussion

The courts have discretion in assigning legal costs for actions under the Act. Each party to the action can assume her or his own costs, or costs may be awarded to either party. Of the cases heard in Ontario in the last twenty years, the majority of those members found to have contravened the Act were excused due to inadvertence or bona fide error in judgement. Consequently, those who initiated the legal actions were left to pay their own expenses. In one case where the saving provisions were applied, the individual was ordered to pay the legal costs of the member.

Many submissions to the Committee raised the question of legal costs and the apparent inconsistency and inequity in the way costs have been assigned by the courts, contending that the general principles of awarding costs should apply under the Act. Accordingly, if a contravention is proven to have occurred, the individual who brought the action should be awarded costs. The fact that a contravention takes place through inadvertence or bona fide error in judgement should be immaterial in the determination of costs. The fact that the breach occurred is sufficient grounds for awarding legal costs against the member. It has also been proposed that the local government body in which the member holds office should be responsible for paying the costs of the individual in a successful action, regardless of the saving provisions.

Under the Act, municipal councils, school boards and local boards are allowed to purchase insurance to cover the legal expenses of members involved in proceedings who have not contravened the Act. Members who contravene the Act are responsible for paying any legal costs awarded against them. Several submissions to the Committee recommended that municipal councils, school boards and local boards be permitted to obtain insurance coverage to compensate the individual for costs in cases where a contravention was proven.

Submissions to the Committee repeatedly expressed the need for a more equitable assignment of legal expenses in order to encourage individuals to undertake enforcement activities. Comment focused on reducing the individual's legal costs in instances where the member was proven to be in contravention of the Act. This would be viewed as an incentive to undertaking legal proceedings.

Recommendation 26 **That the present provisions in the Municipal Conflict of Interest Act regarding costs of legal proceedings be retained.**

Rationale

Given the new enforcement mechanism recommended previously in this report, the Committee believes there is no reason to change the present rules on legal costs. The new model would minimize costs for complainants and respondents because the enforcement body would be responsible for undertaking proceedings. In situations where an elector chooses the alternative of pursuing an action through the courts, the judge would retain discretion in awarding costs, allowing for fairness to both complainants and respondents, depending on the circumstances.

OPTION FOR HIGHER STANDARDS

Issue

The Municipal Conflict of Interest Act should provide for flexibility to recognize the many differences between large and small municipalities and the different types of local government bodies.

Background and Discussion

To recognize the significant differences between municipalities and local government bodies, it has been argued that municipal councils, school boards and local boards should have the right to set higher and/or additional standards of conduct for regulating conflict of interest than those established in the Act. Such a provision would eliminate the need to impose standards which might prove unworkable if applied to all municipalities.

Recommendation 27

That the Municipal Conflict of Interest Act be amended to permit a municipal council, by by-law, and a school board or local board, by resolution, to establish higher and additional standards of conduct with respect to the duty of a member which are consistent with the purposes of the Municipal Conflict of Interest Act.

By-laws and resolutions for the establishment of higher and additional standards would be filed with the Municipal Conflict of Interest Commission and with the municipal clerk or appropriate school or local board official.

Recommendation 28

That the enforcement provisions of the Municipal Conflict of Interest Act apply to the additional standards of conduct for members adopted by a local government body.

Rationale

This local option gives municipal councils, school boards and local boards the flexibility to fashion higher or additional standards of conduct in keeping with their local circumstances and specific needs. The Committee also views this recommendation as giving municipal councils, school boards and local boards explicit authority to adopt a code of conduct for their members.

EDUCATION AND TRAINING

Issue

There is general consensus that many members are not adequately aware of their responsibilities under the Municipal Conflict of Interest Act. The public also lacks understanding of the legislation and of its responsibility in the process.

Background and Discussion

Misinterpretation and ignorance of the legislation were cited to the Committee as common reasons for many of the contraventions of the Act. Some members have experienced difficulty in complying with the Act due to the vagueness of many of the provisions, while others have been entirely uninformed with respect to its requirements. It is also recognized that the public is not fully familiar with the Act and the legislative responsibilities of local government members.

Developing more effective conflict of interest legislation will go a long way towards ensuring the integrity of our local government decision-making process. But in order for members to conduct themselves in accordance with the legislation, it is essential that they be fully aware of the application of the Act and their responsibilities under it. Notwithstanding the existing training and education initiatives in the area of municipal conflict of interest, submissions from both members and the public called for additional and more comprehensive efforts. Suggestions included educational publications for members and the public, and training sessions for members, not only when they assume office but also following any changes to the legislation.

It was also suggested that members be required to attest to their understanding of the Act when they assume office. Under the Municipal Act, members of municipal council, public utilities commissions, and councils of police villages are required to take an oath of office before assuming these official duties. Similarly, school board members take an oath of office as required under the Education Act. Both oaths state that the member "will disclose any pecuniary interest, direct or indirect, as required by and in accordance with the Municipal Conflict of Interest Act."

Recommendation 29 **That the Ministry of Municipal Affairs and the Ministry of Education, in coordination with the appropriate local government associations, develop appropriate educational materials and training programs for members and the public.**

Recommendation 30 **That the oaths of office in the Municipal Act and the Education Act be amended to state that the member has read and agrees to comply with the provisions of the Municipal Conflict of Interest Act.**

Recommendation 31 **That the Municipal Conflict of Interest Act be rewritten in plain language and be amended to include an index.**

Rationale

A comprehensive educational program for members should increase their understanding of the legislative requirements and contribute to a reduction in contraventions of the Act. Initiatives designed for the public should enhance public awareness of conflict of interest and inform the public of the available procedures for acting under the legislation. In addition, the material published by the Municipal Conflict of Interest Commission as recommended under the section entitled **Enforcement**, should provide additional guidance in understanding and complying with the Act.

Amending the oath of office to specify that the member has read the provisions on the Act would make it incumbent on the member to be aware of her or his responsibilities under the Act. Rewriting the Act in simple language and including an index would make the legislation easier to understand and follow.

OTHER ISSUES

POST-EMPLOYMENT RESTRICTIONS

Issue

Should restrictions be imposed on members' and former members' employment with local government bodies?

Background and Discussion

Post-employment restrictions or cooling-off periods restrict the ability of a former member to carry on business with the local government body for a specific period of time after leaving office. The restriction is intended to enhance fairness and the perception of fairness in local government. A cooling-off policy generally addresses who is restricted, which activities are restricted, and the appropriate length of time.

The restriction is intended to prevent members from taking advantage of their familiarity with the internal operation of the organization, knowledge of certain substantive matters, and personal contacts with employees in decision-making positions. The general public is not privy to this kind of information, so former members are in a position of advantage when conducting business with the municipality, school board or local board. Further, the fact that some former members assume positions in private enterprise based on experience they gained in the public sector often gives rise to the perception that their public service was undertaken to benefit them later in the private sector.

Numerous submissions to the Committee commented on the need for some type of post-employment restriction for members. While the recommended length of time for the restriction varied, a cooling-off period of one year was most frequently suggested.

A related issue involves the actions of members with respect to obtaining employment with the local body on which they hold office. Several submissions expressed concern with the potential for members to use their position of authority to exert pressure on an employee's hiring decisions, or to cause the employee's dismissal so that the member may attain the position.

Other Jurisdictions

The Member's Conflict of Interest Act contains provisions restricting a member's employment and advisory activities for a one year period after leaving office.

Recommendation 32 **That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions be amended to prohibit a member from being employed by the municipal council, school board or local board on which she or he held office until a minimum of six months has passed after she or he leaves office.**

Rationale

Although the issue of members acting as agents was raised as an area requiring regulation, the Committee is of the opinion that placing restrictions on a member's private business activities after they leave office is inappropriate and outside the mandate of the review. Accordingly, no recommendation has been made on this subject.

In regard to the issue of a member obtaining subsequent employment with the local government body, a six month cooling-off period is recommended to reduce influence, actual or perceived, during the hiring process. A more stringent requirement in this area could be adopted at the discretion of the municipal council, school board or local board as a higher or additional standard, as discussed under the section **Option for Higher Standards**.

COVERAGE FOR LOCAL GOVERNMENT EMPLOYEES

Issue

Should conflict of interest rules extend to employees?

Background and Discussion

The principles of the Act are designed to ensure ethical conduct by members and thereby enhance the public's confidence in local government decision-making practices. Similarly, high standards of integrity and honesty for employee conduct are also essential to maintaining the public trust.

Many municipal councils have passed by-laws regulating the conduct of employees, and many municipal councils have adopted policies for employee conduct. The Association of Municipal Clerks and Treasurers of Ontario recently developed guidelines for establishing an employee code of conduct as a model for municipal councils to use.

Virtually all of the submissions that commented on this issue recommended that local government employees should be subject to conflict of interest rules. In the course of performing their job responsibilities, employees, like members, may become involved with matters in which they have a pecuniary interest. Although they do not participate directly in making decisions on these matters, they do provide advice and recommendations for members to consider in making those decisions. Employees also have access to confidential or privileged information that may benefit them directly. Land use planning and development issues were most frequently cited as potential areas of conflict of interest for employees because of the regular contact they have with representatives of these interests.

Suggestions on how best to regulate employees have focused on two options. It was suggested that conflict of interest rules for employees be included as a separate section in the Act. On the other hand, it has been suggested that legislation should merely require local government bodies to establish a specified standard of conduct.

Recommendation 33 **That the Ministry of Municipal Affairs and the Ministry of Education, in consultation with municipalities, school boards, local boards and local government employee associations, develop a model code of conduct for employees of municipalities, school boards and local boards and school boards.**

Recommendation 34 **That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions be amended to require each municipal council, school board and local board to adopt the model code of conduct for employees within a specified period of time.**

Each municipal council, school board and local board would have permissive authority to adopt higher and additional standards for employee conduct beyond those contained in the model code of conduct.

Rationale

Legislating the requirement for an employee code of conduct would ensure that all local government employees are subject to the same level of standards. Providing for higher and additional standards would allow different municipal councils, school boards and local boards to tailor the code to their specific circumstances and needs.

Recognizing that implementing uniform standards for employee conduct across all municipalities requires an established set of standards, it is recommended that a model code of conduct be developed for use by all local government bodies. It is recommended that the requirement for employee standards of conduct be legislated through the Municipal Act, the Education Act and other appropriate statutes which already contain provisions in other areas regulating municipal, local board and school board employees. Accordingly, the Municipal Conflict of Interest Act would continue to apply only to members. Separate treatment for members and employees would recognize the distinct differences between the two groups.

GIFTS AND BENEFITS

Issue

Gifts and personal benefits are not currently covered by the Municipal Conflict of Interest Act.

Background and Discussion

The Criminal Code prohibits the acceptance of gifts given with the intention to influence the outcome of any decision. The majority of submissions to the Committee recommended that the acceptance of gifts, benefits and other gratuities by members should be subject to some type of regulation. There was consensus that it is inappropriate for members to accept these items from those who carry on business with or make representations before municipal councils, school boards or local boards. Some people felt that accepting gifts or benefits of a modest value should be permissable, especially in the cases where gifts are given in relation to protocol and official duties. Others, however, felt strongly that accepting any gift or benefit, regardless of the scope or value, could potentially compromise or obligate the member.

The Members' Conflict of Interest Act prohibits Members of the Ontario Legislature from accepting gifts or personal benefits, except those related to protocol. In regard to these, the Act requires members to file a written statement reporting receipt of any gift or personal benefit exceeding a value of $200 or the value of all gifts and personal benefits from a single source during any twelve month period that exceed $200 in value.

Recommendation 35

That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions be amended to regulate the acceptance of gifts and benefits in the same manner as the Members' Conflict of Interest Act, which regulates Members of the Ontario Legislature.

Members would be prohibited from accepting gifts or benefits except for those related to protocol or social obligation. Gifts or benefits of protocol or social obligation having a value greater than $200, or gifts and benefits of

protocol or social obligation received from a single source during any twelve month period that exceed a value of $200, would be reported in writing to the municipal clerk or appropriate school or local board official.
(See Appendix E for proposed form.)

Any donations contributed during the campaign period for election campaign purposes would continue to be subject to the Municipal Elections Act.

Rationale

The Committee recommends that the acceptance of gifts and benefits of protocol and social obligation continue to be permitted, but that those with a value greater than $200 be made public information. The Committee views the giving and acceptance of gifts and benefits of protocol or social obligation as a legitimate feature of holding public office, and the Committee understands that refusing such items could result in embarrassment or awkwardness for a member. The Committee recommends provisions parallel to those contained in the Members Conflict of Interest Act.

In the Committee's view, the subject of gifts and benefits is properly outside the scope of the Municipal Conflict of Interest Act because there is no direct connection between a gift or benefit and any matter under consideration by the member. The treatment of gifts and benefits is an ethical matter outside the scope of the recommended definition of "conflict of interest" and does not belong in the Act. Accordingly, the Committee recommends that provisions to regulate this area be included in the Municipal Act, the Education Act and other appropriate statutes which contain general standards of conduct for members.

INSIDER INFORMATION

Issue

By virtue of their office, members are privy to confidential or privileged information that may benefit them materially.

Background and Discussion

In reviewing the subject of conflict of interest, the issue of insider information was raised by many submissions. In the performance of their duties of public office, members have access to information that is not available to the general public. Some of this information can be materially beneficial to the member.

As an example, a submission to the Committee related circumstances in which members who were developers and real estate professionals without direct, indirect or deemed pecuniary interest in a matter under consideration were nevertheless in a position to benefit materially from insider information gained during a closed meeting of a municipal council or committee relating to real estate matters generally and the acquisition of lands in particular.

Many submissions argued that the Act should regulate members' use of insider information. It was suggested that the legislation should exclude from closed meetings those members who might profit materially from information discussed at the meeting and should penalize members who use insider information to their material advantage.

Other Jurisdictions

The Manitoba legislation contains a provision to regulate the use of insider information.

Recommendation 36

That the Municipal Act, the Education Act and other appropriate statutes related to local boards and commissions, be amended to prohibit a member, or former member, from using confidential or privileged information gained while in office for the purposes of her or his own or another's financial gain or avoidance of financial loss, if at the time the information is used it is not public information, and to provide for the appropriate penalties.

Recommendation 37 **That the oaths of office in the Municipal Act and the Education Act be amended to state that the member shall not, during or following her or his term in office, use confidential or privileged information for her or his own or another's financial gain or avoidance of financial loss.**

Rationale

The Committee decided that the subject of insider information is not within the scope of the Municipal Conflict of Interest Act because the financial interest leading to the potential gain may not exist at the time the information is acquired and thus is not a "pecuniary interest" under the recommended definition. In addition, a member could acquire insider information while at the same time complying with the Act. This could happen if a member disclosed a pecuniary interest and withdrew from participation, but learned something later and used it to her or his advantage. Accordingly, the Committee recommends that provisions to regulate this area be included in the Municipal Act, the Education Act or any other appropriate statutes which contain general standards of conduct for members. The Committee decided that provisions to regulate insider information should survive the member's term of office until the information becomes public.

Amending the oath of office to require members to swear not to use insider information would underscore the importance of this aspect of their responsibilities as local government representatives.

MUNICIPAL ELECTION CAMPAIGN CONTRIBUTIONS

Issue

There is a perception that the propriety and objectivity of a member may be compromised when a matter under consideration involves an individual who contributed to the member's election campaign.

Background and Discussion

The campaign period for municipal elections begins on January 1st of election year and continues to March 31st of the year following elections. This permits a member to receive campaign contributions for more than four months after she or he has assumed office.

It has been suggested that contributions, particularly those made after the election, may be proffered to influence the member while in office. Although it was proposed that election campaign contributions received by members after they have assumed office should be treated differently from those received before the election, few recommendations for achieving this were suggested.

Recommendation 38 **That no amendments be made to the provisions of the Municipal Elections Act regarding receipt and reporting of municipal election campaign contributions.**

Rationale

The Municipal Elections Act requires all candidates for local government office, including those who were elected, to disclose and report their campaign contributions following the campaign period. These financial statements are public records and are available for viewing at the office of the municipal clerk. Surplus campaign funds must be used by the candidate in the next municipal election campaign. If a candidate chooses not to seek re-election, the surplus funds become part of the general funds of the local government body. The Committee views the existing provisions in this area to be appropriate and sufficient.

OPEN AND CLOSED MEETINGS

Issue

The statutory procedures for conducting meetings are unclear and are applied inconsistently across municipalities.

Background and Discussion

Repeated submissions were made to the Committee urging reform and clarification of the legislated procedures for conducting meetings of municipal councils, school boards and local boards. In particular, many expressed concern with the incidence of closed meetings and the public's inability to monitor matters discussed in camera, especially those involving a member's pecuniary interest. Procedures for the proper conduct of municipal council and local board meetings are contained in the Municipal Act, and school board meeting procedures are set out under the Education Act. Statutes governing other local boards are generally silent on this subject.

In 1990, the Ministry of Municipal Affairs introduced Bill 152 to amend the procedures for conducting meetings contained in the Municipal Act. Bill 152 did not proceed past the first reading stage; however, the Committee has been advised that Ministry is presently reviewing the provisions in the Bill with a view to bringing forward amendments in the near future.

Recommendation 39 **That the Provincial Government act expeditiously in bringing forward legislative changes to the Municipal Act, the Education Act and other appropriate statutes related to local boards to provide for greater openness and accountability in the conduct of meetings by municipal councils, school boards and local boards.**

Rationale

The Committee agrees that the public's business should be conducted publicly. Clearer procedures for greater openness in conducting municipal council, school board and local board meetings would enhance the public's perception of, and trust in, the integrity of decision-making at the local level.

SCHOOL BOARD MEMBERS-EMPLOYEES

Issue

School board employees, particularly teachers, often serve as trustees of another school board. Many school board trustees are placed in a position of conflict of interest by reason of being an employee of another school board, or by spousal and family pecuniary interests in labour-related matters under consideration by the school board. Such matters are often consistent with, or related to, matters under consideration in other school board jurisdictions. In particular, salary and other contractual negotiations, and educational programs and policies are being increasingly influenced on a province-wide basis.

Background and Discussion

Existing Legislation

The Municipal Act disqualifies municipal or local board employees from holding office on municipal council and on an upper tier council in the same metropolitan, regional or district municipality. Counties are excluded from this provision. Employees may be granted a leave of absence prior to campaigning for municipal office but must resign their position of employment if elected. School board employees are exempted from this provision.

A similar prohibition is contained in the Education Act, which makes school board employees ineligible to hold office on the board that employs them. With the exception of Metropolitan Toronto, a school board employee is, however, eligible to be a member of any other school board. In Metropolitan Toronto, the prohibition extends to any other board of education in the metropolitan area.

The intent of these prohibitions is to ensure accountability and impartiality in decision-making on matters affecting the operation of the council, school board, or local board. It embodies the rule that no person can serve as both master and servant.

Concern with this issue focuses on two points. The first relates to the inter-relationship where an employee of one board serves as a trustee on another. A substantial number of individuals in the educational field, primarily teachers, hold office on school boards, and the majority of matters considered by school boards relate to educational programs and policies, and labour-related issues which are usually consistent across the province. Consequently,

decisions made by one school board often have an effect in another school board jurisdiction, which places these members in a conflict of interest situation. The example cited most often was collective bargaining.

In Re Benn and Lozinski[9], the court held that a member of the school board had a pecuniary interest in a matter under consideration solely because the member, who was employed by another school board, was a member of the Ontario Teachers' Federation and had paid fees to that body on a sliding scale proportionate to the teacher's salary.

The second related point involves the pecuniary interests of the member's spouse and relatives. Because many school board members have spouses or relatives, as defined under the Act, who are employed by school boards, the member is required to disclose a deemed pecuniary interest on a regular basis. It was suggested to the Committee by a presenter at the Thunder Bay public meeting that a member of a school board in that municipality could be required to disclose a deemed pecuniary interest because the member's daughter was an employee of a school board in Toronto. The only linkage was the federation dues and the ruling in the Re Benn and Lozinski case cited above.

Representations to the Committee have indicated that at any given time, fifty percent of school board members may be required to withdraw from decision-making due to conflicts of interest of this nature. Therefore, decisions on these issues are always made by the same remaining members. Concern is largely centred on the fact that many members are not involved in the decision-making process on a continuing basis, and therefore are not adequately fulfilling their representative role.

Options Presented

Public input on this issue varied significantly around the following options.

Status Quo - Maintain the existing eligibility provisions allowing a school board employee to hold office on a school board, other than the board which employs her or him, regardless of employment commitments or relationships which may create a continuing conflict of interest.

---

[9] (1982) 37 Ontario Reports (2d) 607.

Disqualification - total - Disqualify all school board employees from holding office on any school board throughout the province.

Disqualification - partial - Disqualify school board employees from holding office on a school board within the metropolitan, regional, county, or area of jurisdiction of the school board by which they are employed.

Exception - total - Provide an exception for employees of other school boards for all employee-related matters.

Exception - partial - Provide an exception by reason only of being member of the Ontario Teachers' Federation and having paid dues to such body. This exception would also extend to a deemed pecuniary interest, such as specifically named family members.

Recommendation 40 **That the Ministry of Municipal Affairs and the Ministry of Education strike a task force to examine further the issue of school board employees-members as it relates to municipal conflict of interest and to review the existing provisions for municipal employees and school board employees regarding eligibility to hold local government office.**

Rationale

The considerable number of comments on this issue have demonstrated that it is an area of significant concern to many people. The Committee feels strongly that this issue warrants further study by those parties with extensive knowledge and involvement in the area. The issue raises questions and holds implications which fall outside the scope of the Municipal Conflict of Interest Act.

The Committee's recommendation under the section entitled **Union and Professional Memberships** is intended to enhance participation by relieving school board members-employees who are members of the OTF from the disclosure and withdrawal requirements.

DUAL EMPLOYMENT

Issue

Should restrictions be imposed on a member regarding full or part-time employment outside of local government office?

Background and Discussion

Currently, no restrictions apply to the full or part-time employment activities a member is involved in outside of her or his duties of public office. Some people have questioned the objectivity of members whose employment activities may give rise to pecuniary interests in matters under consideration.

Recommendation 41 **That no restrictions be imposed on a member's employment activities outside of her or his duties of local government office.**

Rationale

The Committee has considered the issue of dual employment but does not recommend any change in this area. The whole scheme of the Act contemplates that a member will likely have other interests, including pecuniary interests, in matters outside of office and provides safeguards to prevent pecuniary gain by a member.

APPENDIX A

Terms of Reference for the Municipal Conflict of Interest Consultation Committee

The purpose of the Consultation Committee is:

- to consult with the public, municipalities and their local boards, school boards, and other interested groups, associations and persons, through a series of public meetings and discussions. The Committee will also welcome written submissions.

- to identify and make recommendations regarding issues related to existing Municipal Conflict of Interest Legislation. For example, the committee shall consider such questions as:

  - whether the current legislation adequately determines when a conflict exists?

  - whether the Municipal Conflict of Interest Act should extend to municipal and school board employees?

  - whether conflict rules should extend to gifts and benefits received because of position or office?

  - whether local politicians should be required to disclose significant assets and interests which may create conflicts?

  - whether current rules pertaining to eligibility to hold elected office and maintain full-time employment should be the same in large and small municipalities?

  - whether electors should be relieved of the burden for enforcing the Act through the courts?

- to report to the Minister, by July 31, 1991, with recommendations for new legislation, which will address the concerns and issues that are raised.

APPENDIX B

Biographies of Members of the Municipal Conflict of Interest Consultation Committee

Committee Chair

Cy Armstrong

Cy Armstrong has had a long career in municipal government. Between 1986 and 1990, he was city manager of the City of Edmonton. For many years before that, he was the chief administrative officer of the Regional Municipality of Hamilton- Wentworth and the City of St. Catharines. He has also worked for the Cities of North Bay and Hamilton, and for the provincial government. He has been active in many professional associations, including the Ontario Municipal Administrators Association, the Canadian Association of Municipal Administrators and the International City Management Association, among others. He holds a degree in civil engineering from the University of Toronto.

Committee Members

David Barrett

In 1956, following service in the Royal Canadian Navy, David Barrett embarked on a 33-year career in local government. He served the City of Welland as City Clerk for 24 years, retiring in 1989. Active for many years in professional associations, he served for 13 years on the board of directors of the Association of Municipalities of Ontario, including a term as administrative vice-president. Mr. Barrett has been a trustee on the Welland County General Hospital Board since 1981, and was chairman between 1987 and 1989. He is currently serving a two-year term on the board of the Ontario Hospital Association.

Melissa Coleman

Melissa Coleman is an administrator with the Douglas-Coldwell Foundation, a charitable foundation funding political, social and economic research and publication in Canada. Ms. Coleman has been active for 15 years working with, and as a member of, community groups in the Ottawa-Carleton region, most recently with Civic Forum, a newly-formed municipal action organization.

Lila Cyr

Lila Cyr was first elected to the municipal council for the Town of Blind River in 1982 and has been a councillor ever since. She served as deputy mayor for one term - 1985 to 1988. A former president of the Blind River and Area Chamber of Commerce, she has served on many boards as an elected official and as a volunteer. Mrs. Cyr has been chair of Algoma's District Family Services since 1985, vice-chair of Blind River and Area Suburban Planning Board since 1982, and member of the Algoma District Home for the Aged since 1988. Her volunteer work includes serving on the Hospital Ladies' Auxiliary, the Legion Ladies' Auxiliary. She served as president and vice-president of minor hockey associations in Blind River from 1973 to 1981.

Phyllis Davison

Phyllis Davison is a freelance performing artist working out of the Sudbury community and throughout the province. Born in Scotland, she immigrated to Canada in 1969. Before becoming a full-time performing artist, Mrs. Davison worked with Co-operative Nursery Schools in Sudbury and with the Sudbury and District Association for the Mentally Retarded. She also taught at the public school level in Sudbury and worked for Laurentian University. Mrs. Davison is involved with local organizations including the Walford-Nepahwin Neighbourhood Ratepayers Association, Extend-A-Family, the Community Composting Committee, the Sudbury Arts Council and the Northern Lights Festival Boreal.

Elizabeth Kishkon

Elizabeth Kishkon has been actively involved in the political and community life of Windsor for the past 25 years. She became the city's first woman mayor in 1982 after serving two terms on city council. Ms. Kishkon became well known in her community as a radio broadcaster for CBC radio between 1971 and 1980. She has been a part-time commissioner with the Ontario Human Rights Commission since 1986. Ms. Kishkon hosts a twice-weekly interview program on cable television in Windsor. She holds an honourary Doctor of Laws degree awarded in 1986 by the University of Windsor.

Leo Longo

Leo Longo is a partner with the law firm Aird and Berlis. His practice is restricted to municipal law, and planning and development law. He was admitted to the Bar of Ontario in 1979 after studying at University of Toronto and Queen's University. He is chairman of the Municipal Law Section of the Canadian Bar Association, Ontario, and served as a member of the association's Committee on New Rules of the Ontario Municipal Board. He has written and lectured extensively on municipal and planning law.

Duncan Read

Duncan Read is a trustee on the Durham Board of Education, representing Wards 1, 2, and 3 of the Town of Ajax. First elected in 1985, he is a former director of the Ontario Public School Boards Association. He is executive director of the Advocates' Society, a professional association supporting the special needs and interests of Ontario's litigators. He was called to the bar in 1979. He holds an LLB from the University of Windsor and a MA in History from the University of Waterloo. He is presently a member of the Board of Directors of the Ontario March of Dimes.

David Siegel

David Siegel is Associate Professor of Politics at Brock University. In 1988-89 he served as research director for the commission reviewing the government of the Regional Municipality of Niagara. He has previously worked for several departments of the federal government, and for the City of Toronto. Professor Siegel holds a Ph.D. in Political Science from the University of Toronto and an M.A. in Public Administration from Carleton University. He is also a Certified General Accountant. He is co-author (with Kenneth Kernaghan) of the book, Public Administration in Canada, and has written many articles on public administration, local government and budgeting.

Michael Smither

Michael Smither is editor and publisher of Municipal World magazine. He is also a municipal consultant and local government advisor. Mr. Smither was co-chairman of the Association of Municipalities of Ontario Municipal Conflict of Interest Committee in 1979, and author of the Committee's report, which led to the enactment of the Municipal Conflict of Interest Act in 1983. The committee report has influenced conflict of interest legislation in other provinces as well. Mr. Smither is also author of the book, Municipal Conflict of Interest, published in 1983, and updated in 1990. He has written and lectured extensively about municipal government and law.

Ray Timson

Ray Timson has worked as a journalist in Peterborough, London, Vancouver, Montreal and Toronto. He worked for 30 years with the Toronto Star, holding the positions of reporter, assistant city editor, city editor, assistant managing editor, managing editor, executive managing editor, and assistant to the publisher. He retired in 1990. He is currently a governor of the National Newspaper Awards.

APPENDIX C

Public Meetings in 1991 Held by the Municipal Conflict of Interest Consultation Committee

Date	Location
April 2	Mississauga
April 2	Windsor
April 3	Thorold
April 3	London
April 4	Toronto
April 9	Ottawa
April 9	Oshawa
April 10	Cornwall
April 10	Hamilton
April 23	Peterborough
April 23	Timmins
April 24	Kingston
April 24	Sudbury
April 25	Sault Ste. Marie
April 30	Orillia
April 30	Pembroke
May 1	Owen Sound
May 1	North Bay
May 7	Kenora
May 7	Kitchener
May 8	Thunder Bay
May 8	Scarborough
May 9	Fort Frances
May 9	Newmarket

APPENDIX D

Submissions and Presentations to the Municipal Conflict of Interest Consultation Committee

Counties

County of Brant
County of Elgin
County of Huron
County of Peterborough
County of Renfrew

Metropolitan and Regional Municipalities

Metropolitan Toronto
Regional Municipality of Durham
Regional Municipality of Haldimand-Norfolk
Regional Municipality of Ottawa-Carleton

District Municipality

District Municipality of Muskoka

Cities

City of Burlington
City of Etobicoke
City of North York
City of Ottawa
City of Scarborough
City of Toronto
City of Vanier
City of Windsor

Towns

Town of Aylmer
Town of Carleton Place
Town of Durham
Town of Essex
Town of Hearst
Town of Oakville
Town of Pelham
Town of Petrolia
Town of Thessalon
Town of Wallaceburg

Villages

Village of Belmont
Village of Bobcaygeon

Townships

Township of Chandos
Township of Colchester South
Township of Cumberland
Township of Delhi
Township of Dubreuilville
Township of Dunwich
Township of Erin
Township of Ernestown
Township of Glanbrook
Township of Himsworth South
Township of Hope
Township of Howard
Township of Howick
Township of London
Township of Maidstone
Township of Malahide
Township of Oro
Township of Raleigh
Township of Sandwich South
Township of Terrace Bay

Local Boards

Public Utilities Commission of the City of Brockville
Sarnia-Clearwater Hydro Electric Commission
Thunder Bay Hydro
Windsor Public Library

School Boards

Carleton Board of Education
Central Algoma Board of Education
Dryden District Roman Catholic Separate School Board
Dufferin-Peel Roman Catholic Separate School Board
Essex County Roman Catholic Separate School Board
Frontenac County Board of Education
Lakehead Board of Education
Lakehead District Roman Catholic Separate School Board
Lambton County Roman Catholic Separate School Board
Lanark County Board of Education
Lanark, Leeds and Grenville County Roman Catholic Separate School Board
Leeds and Grenville County Board of Education
Lincoln County Catholic School Board
London Board of Education
Metropolitan Toronto Separate School Board
North York Board of Education
Peel Board of Education
Renfrew County Board of Education
Sault Ste. Marie Board of Education
Sault Ste. Marie District Roman Catholic Separate School Board
Timiskaming Board of Education
Waterloo County Board of Education
Waterloo Region Separate School Board
Welland County Roman Catholic Separate School Board
York Region Roman Catholic Separate School Board

Local Government Associations

Association of Municipal Clerks and Treasurers of Ontario
Association of Municipal Tax Collectors of Ontario
Ontario Association of Committees of Adjustment and Land Division Committees
Ontario Separate School Trustees' Association
Provincial Association of French Language Separate School Trustees

Other Associations

Alternatives '91
Association franco-ontarienne des conseils d'écoles catholiques
Association of Oro Township Ratepayers
Association to Protect Lemoine Point
Civic Forum
Cliffside Village Business Improvement Area
Coalition Advocating Responsible Development
Concerned Citizens for Fairbank Park
Confederation of Residents and Ratepayers' Association
Federation of Citizens' Associations of Ottawa-Carleton Inc.
Labour Council of Metropolitan Toronto and York Region
Lansing Community Association Inc.
London Taxi Drivers' Association
Ontario Committee of the Communist Party
Quinte Labour Council
Sudbury Business and Professional Women's Club
Tiny's Inland Residents Working Together Inc.
Tottenham Chamber of Commerce
Welcome and Dale Residents
Wellesley Township Ratepayer's Association
Whitehaven Community Association
Yonge treet Area Ratepayer Associations

Individuals

ADAM, Elaine
AGOSTINO, Dominic
ANDREWS, Frank
ARTUSO, Vince
ASBELL, I.J.
BAKER, Harry W.
BARRON, Harvey
BARTON, Russell
BERTHIAUME, Claude
BOSWELL, George
BRADFIELD, Jack
BRENNER, Maurice
BRICKENDEN, John
BRITNELL, Margaret
BROWN, Tom
BURGE, Raymond
BUDDEN, Allen
BURKE, Michael B.
CAMPBELL, Sterling
CERISANO, Stanley
CLARKE, Jean G.
CONWAY, Dave

CORNWALL, William
DANIS, Rene
DAVIDSON, Robin
DEAN, Fred
DESROCHES, Jacques
DIAMOND, Nancy
DOBRUCKI, Rob
DUNBAR, Mac
DUDNICK, Peter
EVERITT, W.H.
FARKAS, Edward J.
FAUBERT, Frank
FERRIS, William
FINLAY, Richard
FORBES, Robert
FORBES, Ron
FORFAR, Dave
FOX, John E.
GAMBLE, Sam
GOOD, Graham
GOODLAND, Cynthia M.
GRAINGER, Brian
GRAY, M.J.
GRESE, Carol
HEATON, Robert
HEIL, Robert J.
HEISKANEN, Risto
HILL, Elizabeth
HOLMES, Diane
HOSTETLER, Nell
HOULE, Harvey
HUNTER, Ian

HUNTER, William
HUTCHINSON, Peggy
JEFFREY, Vera A.
JOHNSTON, Warren
JONES, Elwood
JUDGE, Shane
KAY, John A.
KELLAWAY, Theresa
KEMP, Colin
KING, C.W.
LARSON, Rene
LEACH, Doug
LINDENBACH, Richard
LISTER, Ronald
LONGTHORNE, Margaret
MACDONALD, Ronald
MACRAE, Robert
MARINIER, Jean-Claude
MAROOSIS, George
MARTINDALE, Bob
MAYES, Brian
MC INNIS, Allan
MC INNIS, Sannie
MELVILLE, G. David
MILLER, John
MONAHAN, Tom E.
MOODER, L.E.
MOONEY, Irene
MORELLATO, Barbara
MURRAY, Douglas
MUSSELMAN, Robert
NAIR, Chris
NORMAN, Doug
OGILVIE, William
POIRIER, Edmund
PRICE, Anthony H.
REES, Christopher
REXE, J. Paul
RHEAUME, Betty
ROGERS, Ian
RUBIN, Allan
SAUVE, Joe
SAVELLI, Elizabeth
SCHULTZ, Charles
SEGUIN, Jeannine
SHAFFER, George
SHARON, Robert
SHORTT, Gerald
SIDON, Mike
SIMMATIS, S. Darlene
SLACK, Linda
SMITH, Chris
SMITH, Susan
SNOW, Ray
SNYDERS, Joe
STARBUCK, Stuart
STIRTZINGER, Craig
STOLLAR, Marty
SWIDDLE, Ronald M.
TAYLOR, Neil
THOMEY, Daniel J.
THOMLINSON, Robert
THOMPSON, Margaret
TINGLE, D. Wayne
TOZZI, Julie
VAN EGMOND, John
VAN WALLEGHEM, George
VAUGHAN, Linda
VEN WYK, A.
VENERUZ, Francis A.
WARD, Richard
WESTFALL, Darryl
WHETUNG, Timothy
WHITE, Norma
WILKINSON, William
WILLIAMS, Colin
YURICK, Ron
ZAFAR, Siad

APPENDIX E

Proposed Forms Under the Amended Municipal Conflict of Interest Act

1. Member's Disclosure Statement of Assets and Interests

2. Member's and Advisor's Disclosure of Pecuniary Interest

3. Member's Statement of Gifts and Personal Benefits.

MEMBER'S DISCLOSURE STATEMENT OF ASSETS AND INTERESTS

Municipal Conflict of Interest Act, 199
Section ____

The member shall file this statement with the municipal clerk or appropriate school or local board official within sixty days after election or appointment to office. The member shall file a supplementary statement within thirty days of any change in status of assets and interests.

Name of municipal council/school board/local board

Name of member

Name of spouse

In accordance with the Municipal Conflict of Interest Act, 199 , I declare the following to be the assets and interests of myself and my spouse.

MEMBER - SPOUSE **Member** **Spouse**

Municipal address of all real property holdings
and leasehold interests

Municipal address of all real property
upon which a mortgage is held

Signature Date

I consent to the release of any personal information contained on this statement pursuant to the Municipal Freedom of Information and Protection of Privacy Act, 1989.

This statement will be included in the central register of disclosures. The register is available for viewing by the public during normal office hours.

MEMBER'S AND ADVISOR'S DISCLOSURE OF PECUNIARY INTEREST

Municipal Conflict of Interest Act, 199
Section ____

The member shall file this declaration with the municipal clerk or appropriate school or local board official at the meeting before the matter in which the member or advisor has a pecuniary interest is considered. Where the member has not disclosed her or his pecuniary interest due to absence from a meeting, the member must file the disclosure at the next meeting she or he attends.

_____
Name of the municipal council/school board/local board/committee or sub-committee/other

_____
Name of member/advisor

In accordance with the Municipal Conflict of Interest Act, 199__, I disclose a pecuniary interest in the following matter considered by the _____
(municipal council/school board/local board, committee, sub-committee or other) at its meeting on _____, 199__.

_____

_____

The general nature of the pecuniary interest is as follows:

_____

_____

I consent to the release of any of my personal information contained on this declaration pursuant to the Municipal Freedom of Information and Protection of Privacy Act, 1989.

_____
Signature Date

This disclosure will be included in the central register of disclosures. The register is available for viewing by the public during normal office hours.

MEMBER'S STATEMENT OF GIFTS AND PERSONAL BENEFITS

Municipal Conflict of Interest Act, 199
Section ____

Members are prohibited from accepting gifts or benefits except those related to protocol or social obligations. The member shall file this statement immediately with the municipal clerk or appropriate school or local board official if she or he accepts a gift or personal benefit connected directly or indirectly with the responsibilities of her or his office that exceeds $200 in value or where the total value gifts or benefits from a single source during any twelve month period exceeds $200.

Name of municipal council/school board/local board

Name of Member

Date of Receipt	Name of Donor	Address of Donor	Nature of Gift/ Benefit	Value of Gift/ Benefit

TOTAL VALUE $ _____

Describe the circumstances (i.e. protocol or social obligation) under which each gift or personal benefit listed above was given and accepted.

If a gift or personal benefit listed above was received indirectly from a source other than the donor listed above, list the name and address of the source.

In accordance with the Municipal Conflict of Interest Act, 199 , I declare that the gifts and personal benefits listed on this statement were received as an incident of the protocol or social obligations that normally accompany the responsibilities of my office. I consent to the release of any of my personal information contained on this statement pursuant to the Municipal Freedom of Information and Protection of Personal Privacy Act, 1989.

Signature Date

This statement will be included in the central register of disclosures. The register is available for viewing by the public during normal office hours.

* Any gift or personal benefit received during the municipal election campaign period for campaign purposes is subject to the Municipal Elections Act, 1990.